

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

REDDY VIJAY ANNAPPAREDDY)
Plaintiff,) Trial Day 5
vs.) Civil No.
PAM ARNOLD, et al.) 18-cv-3012-JFA
Defendants.) Baltimore, Maryland
June 6, 2023
9:30 a.m.

THE ABOVE-ENTITLED MATTER CONTINUED FOR
BENCH TRIAL
BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

A P P E A R A N C E S

On Behalf of the Plaintiff:

JOSHUA D. GREENBERG, ESQUIRE
KOBIE FLOWERS, ESQUIRE

On Behalf of the Defendant United States of America:

MATTHEW P. PHELPS, ESQUIRE
MOLISSA H. FARBER, ESQUIRE
LAWRENCE EISER, ESQUIRE

Also Present:

Reddy Vijay Annappareddy

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR
Federal Official Reporter
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1 (9:30 a.m.)

2 **THE COURT:** Good morning. Be seated.

3 Let's put the witness back on the stand, if we could.

4 - - -

5 **CROSS-EXAMINATION (CONT.)**

6 - - -

7 **BY MR. EISER:**

8 **Q.** Good morning, Ms. Arnold.

9 **A.** Good morning.

10 **Q.** Yesterday we went through the investigative team and the
11 structure of the team. And I believe you mentioned -- since
12 you came in kind of late -- you didn't, yourself, do a whole
13 lot of interviews; is that right?

14 **MR. GREENBERG:** Objection to leading.

15 **THE COURT:** All right.

16 Rephrase the question, please.

17 **BY MR. EISER:**

18 **Q.** Do you recall where we were when we left off?

19 **A.** Yesterday, talking about the team, yes.

20 **Q.** Okay. And did you do a lot of the interviews?

21 **A.** I did. I assisted in some of the interviews. I did more
22 with the Medicaid recipient interviews.

23 **Q.** Okay. And did you review the reports of others that were
24 prepared by Laurie Gutberlet and others?

25 **A.** Yeah. We would certainly have discussions about

1 information that may have been gleaned from different
2 interviews.

3 **Q.** All right. One of the interviews you did was in Defense
4 Exhibit -- it's, I believe, identified in Defense Exhibit 43,
5 which is in evidence.

6 This appears to be an interview with somebody named Mary
7 Sue Cramer?

8 **A.** Yes.

9 **Q.** Do you recall that interview?

10 **MR. GREENBERG:** Well, Your Honor, I would just object
11 because it looks like the exhibit he is referring to is an
12 interview of a different person.

13 **THE COURT:** Do we have the wrong exhibit up?

14 **THE WITNESS:** No, it says follow-up with M. Sue
15 Cramer.

16 **MR. GREENBERG:** Oh, I thought he said 43.

17 **THE COURT:** The one on the screen seemed to be a
18 Cramer interview.

19 **MR. EISER:** I'm sorry, I did say 43. I meant to say
20 Defense Exhibit 35.

21 Thank you, Counsel.

22 **THE WITNESS:** I don't know that I specifically
23 remember interviewing her, but I see the memo here.

24 **BY MR. EISER:**

25 **Q.** Do you recall who she was?

1 A. She was a compliance officer. I think she had initially
2 started off as a pharmacy tech and was promoted to compliance
3 officer/manager.

4 Q. And it notes that she's been interviewed previously. Do
5 you know why you interviewed her a second time?

6 A. Just from what it says here. I don't recall it, but just
7 from what it says here, just to get some clarification on some
8 evidence that she had provided.

9 Q. Okay. And can you note what --

10 **MR. GREENBERG:** Your Honor, going to object. I don't
11 think -- and I could be misremembering, but I don't think this
12 is actually admitted in evidence.

13 **THE COURT:** All right. Can we check with the
14 courtroom deputy to see what her records indicate.

15 **THE CLERK:** Defendant's Exhibit 35 is in evidence as
16 of the start of trial on May 31st.

17 **MR. GREENBERG:** Okay. My apologies, I misremembered.

18 **BY MR. EISER:**

19 Q. Can you read, for the record, the highlighted portion of
20 what Ms. Cramer told you on the first page at the second
21 paragraph.

22 A. "Cramer reported that Reddy, referring to the owner of
23 Pharmacare, would always hide drugs because of audits and would
24 move the medications back and forth between the Suites 120 and
25 122. Investigator asked what she was referring to, and she

1 stated that if the Maryland Board of Pharmacy or any of the
2 MCOs conduct an audit and find the medications not returned to
3 stock within 14 days, you get written up for improper
4 handling."

5 **MR. GREENBERG:** Judge Anderson, I'm just going to
6 object to that statement and the other hearsay statements in
7 this report. That is plainly hearsay, and can only be used for
8 the agent's state of mind.

9 **THE COURT:** Well, I think that's what he's offering it
10 for.

11 Correct?

12 **MR. EISER:** Yes, Your Honor.

13 **THE COURT:** It's admitted for the state of mind for
14 the effect on the person who heard those words, for that
15 limited purpose only, not for the truth.

16 **BY MR. EISER:**

17 **Q.** This idea that you had to reverse undelivered medication
18 bills within 14 days, where did that come from, if you know?

19 **A.** I'm not sure who brought that up on the team. It was
20 discussed at some point and thought, you know, that was an
21 industry standard.

22 **Q.** Was that something that, as Ms. Cramer's noting here, the
23 employees of Pharmacare believed as well?

24 **A.** Yes.

25 **Q.** Okay. The report notes that she provided you some

1 photographs; is that right?

2 A. I think the photographs had been provided in a previous
3 interview.

4 Q. Do you know what they showed?

5 A. I think it was undelivered medications in bins that hadn't
6 been returned to stock.

7 Q. And how many?

8 A. I think the bins were overflowing, so I don't know that
9 there was an actual number, but it was substantial.

10 Q. And what was your assessment of Ms. Cramer as a witness?

11 A. I thought she was credible. She had the experience. She
12 started off as a tech and then was promoted through the
13 company.

14 Q. I'm going to show you what we've marked as Defense
15 Exhibit 43, which is in evidence. Can you identify what this
16 is?

17 A. An interview of Daniel Walker.

18 Q. What's the date -- well, who's the author of this report?

19 A. I am.

20 Q. And what's the date of it?

21 A. June 26th, 2013.

22 Q. Why did you interview Mr. Walker?

23 A. I think he was the -- I mean, unless I take the time to
24 read it, but I think he was the gentleman that was tasked with
25 the behavioral clinics in Baltimore City and getting the

1 clients there their medications.

2 **Q.** Can you just read briefly the highlighted section under
3 the word "Interview."

4 **A.** "On June 12th, 2013, Daniel Walker presented at the MFCU
5 to meet with FBI agent Maura Lating, HHS-OIG agent Robert
6 Mosley, MFCU Investigator James Hagin and this investigator."

7 **MR. EISER:** Your Honor, if I failed to note it,
8 Defense Exhibit 43 is in evidence.

9 **THE COURT:** All right.

10 **MR. GREENBERG:** Your Honor, just to be clear the same
11 point as with respect to Government's Exhibit --

12 **THE COURT:** Same point. It's hearsay, to be sure.
13 But it's a meeting she participated in, and it comes in to show
14 the state of mind of the witness or the effect of these words
15 on the listener.

16 **BY MR. EISER:**

17 **Q.** Can you read for us the highlighted sections on Page 2 of
18 your memo.

19 **A.** "The clinics have been complaining about medications being
20 dropped off for clients they are no longer treating. Walker
21 stated that Reddy is looking to partner up with an unidentified
22 Russian gentleman to open pharmacies in California, Florida,
23 and New York.

24 "Walker advised when he started with his employment with
25 Pharmacare, Reddy had told him to pay the clinics for their

1 business. He refused to do so. He stated that the sales
2 representative, Rodney Moore, had paid clinics. Rodney Moore
3 gave BBH \$5,000.

4 "Walker advised that he is worried about the employees
5 that work for Reddy, that they from India. He stated Reddy
6 does not treat them very well. He does not give them paid time
7 off, does not pay them scale, and has them living in houses in
8 Edgewood, Maryland, that are not in good condition. Walker
9 stated they are treated like indentured servants.

10 "Walker reported Ram Guruvareddy the CFO; he handles all
11 of the finances. Ram is in charge of the logistics department
12 of the deliveries. He oversees all of the deliveries. Walker
13 has seen bins of medications in Ram's vehicle. He believes Ram
14 takes them to Reddy's house. Ram is very loyal to Reddy.

15 "Walker stated Reddy is a one-man operation. He knows and
16 directs everything. Walker stated that Reddy is smart and has
17 his hand in everything. He makes all of the decisions. There
18 is a" -- and then I don't see the next . . .

19 "There is a management team but on paper only. If a
20 clinic questions why a prescription was left for a client they
21 no longer care for, Reddy always says it was a legitimate
22 mistake."

23 **Q.** What was your impression of Mr. Walker as a witness?

24 **A.** I thought he was credible. I think he knew exactly what
25 was going on.

1 Q. And why do you say that?

2 A. He had been working there. He had the experience. I
3 think he was hired as a marketing executive. I think initially
4 he was excited about his position, but he quickly learned that
5 he had no authority to actually fulfill that.

6 Q. Did his information about how Pharmacare was operating,
7 was that consistent with the rest of the information you were
8 getting from the other interviews?

9 A. Yes. Plenty of the employees said the same thing, that
10 they did not have the authority to do the job which they were
11 hired to do. Reddy was a puppeteer.

12 MR. GREENBERG: Objection to the hearsay. As soon as
13 it's admitted only for the effect of the agent's state of mind,
14 then --

15 THE COURT: That's correct. Agreed.

16 BY MR. EISER:

17 Q. And did the assertions regarding the billing and stacking
18 up of undelivered medications, was that also consistent with
19 what you were hearing from others?

20 A. Yes, sir.

21 MR. GREENBERG: And just to be clear, same objection
22 to that last --

23 THE COURT: All right. Same objections.

24 MR. GREENBERG: I can just have a standing objection
25 at that point.

1 **THE COURT:** Yeah, I think it would be good if we just
2 cleared that up.

3 Any of these reports that come in that have been authored
4 by a witness or that memorialize a meeting that the witness
5 participated in, to the extent they have a statement by a third
6 party about pharmacy practices in this case, the Plaintiff has
7 conceded the identification or the authenticity of the
8 document, but suggests it should come in only for the state of
9 mind of the witness or the effect of the words on the listener.

10 And can we just get -- I'd like to keep a clean record.
11 Can we just get a concession from both parties that that's the
12 case with regard to all of these documents we've been
13 reviewing?

14 **MR. GREENBERG:** Your Honor, the Plaintiff agrees.

15 **MR. PHELPS:** Your Honor, you recall -- this issue was
16 kind of briefed, you know, there are some 302s that we have
17 alleged are admissible for their truth --

18 **THE COURT:** Certainly. But I think absent anything
19 else being brought to my attention, we'll understand it comes
20 in for that purpose only. When you want it to come in for
21 something more important or more substantive, you need to stand
22 up and make that point.

23 **MR. PHELPS:** Understood.

24 **THE COURT:** Very good. Thank you.

25 **MR. GREENBERG:** Your Honor, we would also make the

1 point that a lot of this is, I think, violating Rule 403 or
2 coming very close. You saw a lot of this is cumulative, it's
3 kind of wasting time, it's kind of the same stuff over and
4 over. But, you know . . .

5 **THE COURT:** Well, I don't think it's reached the stage
6 of cumulative yet. I disagree. I don't think conducting the
7 balance required by evidence Rule 403, I do not find that the
8 danger of cumulative evidence substantially outweighs the
9 probative value.

10 **MR. GREENBERG:** Thank you, Your Honor. I wasn't
11 saying necessarily right now, but at some point we may get
12 there.

13 **THE COURT:** All right. All right.

14 **BY MR. EISER:**

15 **Q.** Ms. Arnold, you testified yesterday about the process that
16 was used in the drafting of the search warrant affidavit that
17 was submitted on July 23rd, 2013. Do you remember that?

18 **A.** Yes.

19 **Q.** And, just briefly, can you tell us again what that process
20 was.

21 **A.** Can you refresh my memory, I'm sorry. Maybe I don't
22 recall exactly.

23 **Q.** Was there -- did the members of the investigative team
24 have input and review opportunity for the affidavit?

25 **A.** Yes. So we would meet pretty regularly and discuss the

1 affidavit. The affidavit would change regularly depending on
2 information that we found. It was an ongoing investigation,
3 which is why it took months to do and why there were so many
4 drafts and revisions.

5 Q. In that process, as the team is reviewing the affidavit
6 and the revisions to the affidavit, what would happen if an
7 inconsistency arose in terms of the evidence and what was
8 stated in the affidavit, if you know?

9 A. It would be pointed out, and then we would go back and
10 relook at that and continue our investigation to make sure that
11 it was, in fact, accurate.

12 Q. I'm going to show you Defense Exhibit 48 and ask you --
13 this is also in evidence. This is Defense Exhibit 48. And
14 this is -- can you tell us what this is?

15 A. It's an email to the, you know -- I don't know if all of
16 the team is included in it, but it's an email about the changes
17 to the affidavit.

18 Q. Okay. And here it -- this is -- this email is from you,
19 dated July 18th. And what is it that you're reporting to the
20 team there? What are you saying?

21 A. I just said here are my tweaks to the final final.

22 Q. And your tweak was, I believe, on -- regarding
23 Paragraph 28. And what was it that you said?

24 A. "I don't think she" -- being Lisa Ridolfi -- "ever told --
25 was ever told not to do reversals. She has had conversations

1 with the techs Sindhu and Vipin, and they told her Reddy told
2 them not to do reversals."

3 Q. And what occurred as a result of you finding this
4 inconsistency?

5 A. We went back and we continued our investigation to make
6 sure that the statements contained in the affidavit were, in
7 fact, truthful.

8 Q. Okay. Did Ms. Lating interview Laurie Gutberlet regarding
9 this inconsistency?

10 A. I don't know specifically who she interviewed, but I know,
11 ultimately, we did go back and review all of the memos, all of
12 the interviews that were done. There may have been additional
13 interviews to make sure that the information contained was
14 accurate.

15 Q. Okay. And was the affidavit revised?

16 A. Yes, it was.

17 Q. So this is that process that, I guess, you testified took
18 months --

19 A. It was fluid -- yes. It was fluid. It was changing.

20 Q. Did you ever meet with Dennis Tokofsky?

21 A. I think I met with him in August of 2012 when we met with
22 the federal counterpart.

23 Q. Okay. And what was your impression of him as a witness?

24 A. I mean, he seemed to have his thumb on the pulse of
25 Pharmacare. He seemed to know, you know, all the employees who

1 worked there, the different structure of some of the techs that
2 worked at, you know, Plumtree and in Bel Air, and the different
3 locations and the health clinics. I mean, he seemed to know
4 exactly what was going on.

5 Q. Did he appear credible to you?

6 A. He did to me. That was our first meeting with him.

7 Q. Was the information he provided corroborated by others?

8 A. Yes.

9 Q. Did you also meet -- well, you did meet personally with
10 Dan Walker; is that right?

11 A. Yes.

12 Q. What was your impression of him as a witness?

13 A. Same thing, you know. I thought he was smart,
14 intelligent, knew what he was talking. You know, he was
15 polished. He came off educated.

16 Q. And was his information corroborated by others?

17 A. Yes. There wasn't any information that we were given from
18 an interview that we just took that word. If they gave us
19 information, we would corroborate that either through
20 additional interviews, you know, claims, going back through
21 evidence that we had already received. So it was always
22 corroborated.

23 Q. Did you meet personally with Lisa Ridolfi?

24 A. I did.

25 Q. Do you know how many times?

1 A. Three or four, maybe.

2 Q. Did you communicate with her by phone or text also?

3 A. I did.

4 Q. How many times, if you know?

5 A. By text, a lot. Weekly.

6 Q. Okay. What was your impression of her as a witness?

7 A. I mean, same thing. As far as her being a pharmacist in
8 the Plumtree location, I think she knew exactly what was going
9 on within the pharmacy that she was the manager of.

10 Q. Did she ever tell you she wanted to make money as a result
11 of her participation in this criminal investigation?

12 A. I don't recall her specifically saying that. I remember
13 something coming up about the *qui tam* whistleblower portion.
14 You know, it was my understanding that you're only allowed to
15 have one person as a whistleblower. So I don't even know that
16 that was ever seriously considered, at least not in any
17 conversations that I had with anybody on the team.

18 Q. What was your understanding of why she was meeting and
19 providing all this information to you?

20 A. I think she just knew something was wrong. And she was
21 worried that her initials were in a lot of these prescriptions
22 that were undelivered. So I think she was a little bit worried
23 about her license as well.

24 Q. And did the information she provided turn out to be
25 reliable?

1 A. It did.

2 Q. How do you know that?

3 A. Again, it was corroborated. So she would tell us
4 something, and we would go interview other employees,
5 recipients, you know. I mean, you know, some of the Medicaid
6 recipients that we talked to, you know, I don't know if the
7 Court realizes, but a lot of these recipients, you know, they
8 had a diagnosis of HIV. They were very sick. They were not
9 getting their medications. It was a terrible situation when
10 you sit down and talk with these people and realize how sick
11 they are. And then, on top of that, they're not getting their
12 medications. A lot of them are homeless, transient, of course.
13 But you're dealing with all of that. There's that other piece
14 that goes along with all of this.

15 Q. Okay. I'm going to show you Plaintiff's Exhibit 42. This
16 is the document that seems to have been put down in front of
17 everybody but you.

18 And I want to ask you what's going on, this is an email
19 dated May 17th, from Jeremy Dykes on the team, forwarding a
20 summary of data that he provided. And you noted -- well, tell
21 us what you said and why.

22 A. I state in this -- this is referring to the in-and-out
23 analysis, and I state, "This is not what we hoped for." But I
24 realize that when I sent that, that when you look at the
25 attachment that he sent when I went -- because I was not part

1 of the in-and-out analysis. I had -- I had nothing to do with
2 any of that calculation or any of that. When I went, I just
3 looked at the bottom line. I thought that was referring to
4 dollars and not pills. So I actually stated that in error. It
5 was just -- I misspoke.

6 **Q.** I mean, he's providing a multipage analysis and counting
7 of pills. And his email is sent at 5:09 p.m.

8 When was your reply sent, if you can see it? Is it at
9 5:19?

10 **A.** Yes, I'm sorry. I didn't see it.

11 **Q.** So 10 minutes later you shoot off your comment.

12 **A.** Right.

13 **Q.** Does your comment, "This is it not what we hoped for"
14 indicate that your investigative team was not following the
15 evidence, wherever it led?

16 **A.** No, not at all --

17 **MR. GREENBERG:** Objection to the leading. I've let a
18 lot of it go, but . . .

19 **THE COURT:** All right. I'll sustain that objection.
20 That was a leading question.

21 **THE WITNESS:** I'm sorry, am I allowed to answer?

22 **THE COURT:** No, no.

23 Just ask another question.

24 **BY MR. EISER:**

25 **Q.** What does "This is not what we hoped for" reveal about the

1 goals of the investigation, if anything?

2 **MR. GREENBERG:** Objection, lack of foundation. She
3 hasn't testified that it revealed anything. She's already
4 answered what she now says she meant by that statement.

5 **THE COURT:** He's just asking her to expound on what
6 she meant. I think that's a fair question. Overruled.

7 **THE WITNESS:** There wasn't a goal financially,
8 necessarily. I mean, initially when we started investigating
9 this, it did appear that it was a lot of money. You know,
10 there were a lot of different numbers thrown around. Again, I
11 was not -- I'm not an auditor, that was not something I was
12 tasked with handling. So when this came out -- and, again, I
13 looked at the bottom line, thinking it was money and not pills,
14 and saw that, you know, it went from millions upon millions of
15 dollars being discussed, you know, down to 1 million or
16 whatever that amount was, you know. I was just stating that
17 this was not, you know, what we had discussed. That's all.
18 There was no goal financially that it had to be a certain
19 amount for us to -- to continue our investigation.

20 **THE COURT:** Hold on one second.

21 All right. Go ahead.

22 **BY MR. EISER:**

23 **Q.** Ms. Arnold, I'm going to show you what's been marked as
24 Plaintiff's Exhibit 70. It's on the screen. Do you see that?

25 **A.** Yes, sir.

1 Q. This is the final version of the affidavit signed by agent
2 Maura Lating on July 23rd, 2013, is that correct?

3 A. Yes, sir.

4 MR. GREENBERG: I apologize, what exhibit? Oh, 70.
5 Sorry.

6 BY MR. EISER:

7 Q. Did you review this affidavit before it was submitted on
8 July 23rd, 2013?

9 A. Yes.

10 Q. At that time, based on your experience in the
11 investigation, did you believe there was a reasonable basis to
12 believe that Mr. Annappareddy may have been engaging in
13 healthcare fraud through his company, Pharmacare?

14 A. I did.

15 MR. GREENBERG: Objection, calls for legal conclusion.

16 THE COURT: Overruled.

17 BY MR. EISER:

18 Q. Why is it -- why is that?

19 A. Because of all the information we had learned throughout
20 the investigation from, you know, the recipients not getting
21 the medications, the billings that showed they were billed for
22 them and that money was never reversed, from employees that
23 worked there that stated that the medications were not
24 delivered and not reversed, I mean, it was clear that there was
25 something wrong with the way practices were being handled

1 throughout that company.

2 **Q.** Okay. Did any members of the investigative team provide
3 any disagreement or question the assertion that
4 Mr. Annappareddy may have been engaging in healthcare fraud
5 through his company at that time?

6 **A.** No.

7 **MR. EISER:** Your Honor, could I have one moment to
8 confer?

9 **THE COURT:** Yes.

10 (Counsel conferring.)

11 **MR. EISER:** That's all I have Your Honor. Thank you.

12 **THE COURT:** All right. Any additional questions of
13 this witness?

14 **MR. GREENBERG:** Just a few, Your Honor.

15 - - -

16 **REDIRECT EXAMINATION**

17 - - -

18 **BY MR. GREENBERG:**

19 **Q.** Ms. Arnold, you testified that there were HIV patients who
20 were very sick and not getting their medications; do you
21 remember that?

22 **A.** Yes.

23 **Q.** And neither you nor anyone else in the investigation team
24 interviewed a single HIV patient after August 2012, right?

25 **A.** I don't know -- I do not recall the dates. I recall --

1 Q. Let me clarify --

2 A. -- some of the recipients that I interviewed.

3 Q. Do you recall being present at an interview of an HIV
4 patient with the initials R.S. in November of 2012?

5 A. I don't know what R.S. stands for, so I don't.

6 Q. Okay. We can come back to that.

7 Do you agree that no member of the investigation team
8 interviewed an HIV patient after November 2012?

9 A. I don't know the dates, so I cannot agree to that
10 statement.

11 Q. You do agree, though, that unless you actually interview
12 the patient and check the log to see if their medications were
13 received or signed for, you can't know whether or not there was
14 fraud?

15 A. What log are you referring to?

16 Q. Well, you knew from your role in the Pharmacare
17 investigation, from Ms. Gutberlet's memos, that Pharmacare kept
18 logs to confirm receipt of medications, right?

19 A. They kept logs to what? I'm sorry. It's been 10 years,
20 sir, I'm trying to remember.

21 Q. Right.

22 Do you remember very clearly when Mr. Eiser was asking you
23 questions?

24 A. I'm trying to remember now as you ask me questions, sir.

25 Q. Right.

1 So you remember that during the Pharmacare investigation,
2 you learned, at least from Laurie Gutberlet's memos, and
3 actually, also, from your presence at a meeting with Dennis
4 Tokofsky, that Pharmacare kept logs to record the patients who
5 received their prescriptions, right?

6 A. I recall something about logs. I can't say that I
7 specifically remember exactly what their function was.

8 Q. Okay. You agree, Ms. Arnold, that it's obvious that you
9 would need to interview a patient who allegedly didn't receive
10 a medication to know whether or not they, in fact, did not
11 receive their medication, right?

12 A. Not necessarily. If we had -- if we had the pictures of
13 the drugs that had been undelivered with the witness
14 information, we could certainly substantiate that information
15 with the claims.

16 Q. Do you remember that you testified under oath at a
17 deposition in this case?

18 A. I do remember that.

19 Q. And did you testify truthfully then?

20 A. I certainly hope so.

21 Is this where I get to be a movie star?

22 **MR. GREENBERG:** The Court's indulgence.

23 (Video playing.)

24 **BY MR. GREENBERG:**

25 Q. Ms. Arnold, that was truthful testimony, right?

1 A. It was.

2 Q. We can move on from this topic.

3 I want to talk with you about Lisa Ridolfi. Were you
4 aware that she told some of her non-Middle Eastern colleagues
5 that the Middle Easterners had red dots on their faces?

6 A. No, sir.

7 Q. Were you aware that Lisa Ridolfi treated the
8 Middle Easterners worse than she treated the native-born
9 Americans?

10 A. No, sir.

11 Q. And you understood the term "Middle Eastern" to mean not
12 of this country, right?

13 A. Yes, sir.

14 Q. You trusted Lisa Ridolfi, right?

15 A. I did.

16 Q. And, in your mind, Ms. Arnold, you never saw any red flags
17 for Ms. Ridolfi?

18 A. We corroborated the information that she gave us, so, as a
19 result of that, I didn't see any red flags.

20 Q. And all that corroboration would be recounted in the
21 interview memos, right?

22 A. I don't know if all of it is. I mean, a lot of it may
23 have just been discussed.

24 Q. Well, you would agree that it was Ms. Gutberlet's practice
25 to write a memo to the file on everything she did -- or an

1 email on everything she did in the investigation, right?

2 A. I can't speak to what Ms. Gutberlet did or didn't do.

3 Q. All right. Well, put it this way, you agree that it was
4 the MFCU's habit to document information that was obtained
5 during its investigations, right?

6 A. Not all information. I mean, sometimes you're having
7 watercooler conversations that are not going to be scribed in a
8 memo.

9 Q. Okay. Other than, like, stuff like watercooler
10 conversations, MFCU documented everything?

11 A. Interviews that were conducted should have been scribed.

12 Q. And any corroboration efforts would have been also
13 documented, right?

14 A. It could have been information that we already had. So I
15 could have asked somebody about the overflowing bins. They
16 would tell me yes, they saw that. Then we can go back to
17 information we already had and corroborate it that way, not
18 necessarily gaining new or additional information.

19 Q. Lisa Ridolfi never told you that she got a performance
20 warning, in writing, in February of 2012, did she?

21 A. No, sir.

22 Q. Lisa Ridolfi never told you that she got a performance
23 warning -- another performance warning, in writing, in late
24 August 2012, days before she first met with Laurie Gutberlet,
25 did she?

1 A. No. Because she was meeting with Laurie Gutberlet then
2 and not me.

3 Q. That wasn't my question, ma'am.

4 My question was Lisa Ridolfi --

5 A. She never told me, you're correct.

6 Q. She never told you about either of those two performance
7 warnings, both of which were before the first meeting with
8 Laurie Gutberlet, right?

9 A. Don't know the dates. But I never knew about that, no,
10 sir.

11 Q. And back to the corroboration point.

12 You had said that there would be documentation of efforts
13 to corroborate whether they had occurred either previously or
14 subsequently, right?

15 A. It wouldn't necessarily be documented again if it was
16 already documented.

17 Q. That's what I'm trying to clarify, ma'am. You had said, I
18 think, if I understand you correctly, there would be
19 documentation of corroboration, but if it had already been done
20 before, you wouldn't document it again, right?

21 A. I think so, yes.

22 Q. So there would be documentation of any efforts to
23 corroborate that were done, whether they were prior or later?

24 A. Not every -- not every conversation or communication would
25 have been put in a memo. A lot of it was team information that

1 we would discuss.

2 Q. All right. But -- okay.

3 So it would have been -- it would have been -- any efforts
4 to corroborate would have been communicated with the other team
5 members.

6 A. Not necessarily all of them. It was a big team.

7 Q. Right. But the core team members.

8 A. The courtroom members? I'm sorry --

9 Q. Core team members.

10 A. Again, not all of them. Like, I wasn't in all of the
11 meetings about the in-and-out analysis, so I wouldn't have
12 knowledge of that. So there were different pieces of this case
13 that different investigators were tasked with completing, so
14 not everybody, necessarily, was going to be abreast of all of
15 that information.

16 Q. Your personal habit, when you worked at the MFCU, was to
17 corroborate information provided by anybody you interviewed,
18 right?

19 A. On a case separate from this?

20 Q. Throughout your time at the MFCU.

21 A. Separate from this case, where I was lead investigator,
22 the way we handled things in the Medicaid Fraud Control Unit
23 may have been a little bit different than the way things were
24 handled on this team.

25 Q. All right. But when you worked in the Pharmacare

1 investigation, let's focus on that. When you interviewed
2 someone, you would run down any leads they provided to see if
3 you could corroborate it, right?

4 A. Yes.

5 Q. And if you didn't corroborate it, you would put that in --

6 A. It wouldn't necessarily be me specifically that would
7 corroborate that information, if that's what you're asking,
8 sir.

9 Q. So let me clarify. If you interviewed someone during the
10 Pharmacare investigation, Ms. Arnold, and they gave you some
11 information, you would run down that lead either yourself, or
12 another team member would.

13 A. Depending on what it was, whether or not it was necessary
14 for the investigation.

15 Q. Okay. So if it was something you considered important,
16 either you would run down the lead or another team member
17 would.

18 A. It wasn't necessarily me that was making the calls on what
19 was and what wasn't important.

20 Q. Isn't it true that every time you told your team members,
21 "Hey, I got this important information from" --

22 A. I wouldn't have said that.

23 Q. You, as someone who had worked at the MFCU for six years,
24 wouldn't identify what information you thought was important?

25 A. I don't think I would say, "Here's some important

1 information that, boy, I have to share with you."

2 I mean, I think we had meetings and we had discussions and
3 we talked about it. And then we would figure out whether or
4 not this was useful and something that we needed, or if it was
5 something that we already knew to not be *ad nauseam* with the
6 information.

7 Q. What do you mean by "*ad nauseam*"?

8 A. Over, and over, and over, and over, and over, and over,
9 and over, and over, and over again.

10 Q. Okay. Now, I understand you might not use the word
11 "important," okay. I'm trying to sort of talk in generalities
12 just to make this more efficient. Do you understand that?

13 A. I understand the word "generalities," yes, sir.

14 Q. But do you understand that I'm just trying to cut through
15 this and save you time and the Court time?

16 A. I don't know what you're going to ask.

17 Q. Ma'am, I'm just simply trying to . . .

18 For someone who -- if you have of a witness who you know
19 thinks they're going to become a relator, like a whistleblower,
20 and they give you information, and nothing is done to
21 corroborate that information, that is not okay, right? You
22 knew that in 2013.

23 A. I'm sorry, can you repeat the question. I'm not sure I
24 understood.

25 Q. If you have a witness --

1 A. Yes, sir.

2 Q. -- and you're on the Pharmacare investigation --

3 A. Yes, sir.

4 Q. -- who thinks they're going to become a relator or is a
5 relator, i.e. whistleblower, and nothing was done to
6 corroborate what they reported, that's not okay, right?

7 A. There was only one whistleblower, and I think that
8 information was corroborated with Mr. Tokofsky.

9 Q. Ma'am, that wasn't my question.

10 A. Okay. I'm sorry. I don't think I'm understanding your
11 question then.

12 Q. Okay. You understood it pretty well at your deposition.

13 A. Sorry.

14 Q. If there's a witness who thinks they're going to become a
15 relator, and nothing is done to corroborate what that person
16 reports, you would still have to run down the information they
17 provided, right?

18 A. I mean, at that point they're just a witness, correct.

19 Q. I'm talking about a witness who thinks they're going to
20 become a relator.

21 A. How does that change --

22 **THE COURT:** You're asking her a hypothetical question,
23 aren't you?

24 **MR. GREENBERG:** I'm not. Because she's testified
25 that -- given her testimony yesterday.

1 **THE COURT:** Go ahead.

2 **BY MR. GREENBERG:**

3 **Q.** Ms. Arnold, you knew, during your time on the Pharmacare
4 investigation, 2012, including the spring of 2013 and early
5 July 2013, that if you had a witness, who you know thought they
6 were going to become a relator, you would still have to run
7 down the leads to corroborate any information they provided,
8 right?

9 **A.** I think where I'm getting lost is it wouldn't matter
10 whether or not they wanted to become a whistleblower, whether
11 or not that could happen. If I had a witness providing us
12 information, we would try and corroborate the information that
13 they provided.

14 **MR. GREENBERG:** I'm sorry, could the court reporter
15 read back that answer.

16 (Reporter read back as requested.)

17 **BY MR. GREENBERG:**

18 **Q.** All right. So what your testifying to, then, Ms. Arnold,
19 is that regardless of whether or not -- regardless of whether
20 or not a witness in the Pharmacare investigation -- regardless
21 of whether or not you thought the witness believed they were
22 going to become a whistleblower or try to be a whistleblower,
23 you would want to corroborate whatever they said?

24 **A.** I think the whistleblower part is irrelevant.

25 **Q.** All right.

1 **MR. GREENBERG:** Court's indulgence.

2 **BY MR. GREENBERG:**

3 **Q.** During the Pharmacare investigation, Ms. Arnold --

4 **A.** Yes, sir.

5 **Q.** -- you had had about six years' experience at the MFCU,
6 right?

7 **A.** Yes, sir.

8 **Q.** And during the Pharmacare investigation, if an informant
9 told you they were in a heated financial dispute with their
10 employer, that would affect your assessment of their
11 reliability, right?

12 **A.** If they were in a heated financial dispute with their
13 employer?

14 **Q.** Yes.

15 **A.** I don't think it would change the way that we handled
16 witnesses and the information that we were given.

17 **Q.** Well, put it this way, you would at least have to have
18 independent corroboration of what that witness said, right?

19 **A.** What do you mean by "independent corroboration"?

20 **Q.** By independent, I mean from either amount documented or a
21 person, other than that --

22 **A.** I never knew of any such issue with Ms. Ridolfi.

23 **Q.** I'm not talking about Ms. Ridolfi.

24 **A.** Oh. I don't know who -- I thought you started this off
25 asking me about Ms. Ridolfi, I apologize.

1 Q. Ma'am, it's just focus on the questions, okay?

2 A. Okay. Yes, sir.

3 Q. I'm now pivoting a little bit to talk more generally about
4 your habits during the investigation, okay?

5 A. My habits?

6 Q. Yes.

7 A. Okay.

8 Q. Your practices and what did you.

9 A. My practices and my habits, okay.

10 Q. So let me sort of back up and try this again.

11 A. Okay.

12 Q. If you had an informant during the Pharmacare
13 investigation who told you they were in a heated financial
14 dispute with their employer, you would need -- you want to
15 corroborate the information they provided before relying on it,
16 right?

17 MR. EISER: Objection. Hypothetical.

18 THE COURT: I'll allow it.

19 Go ahead. Answer it, if you can.

20 THE WITNESS: I'm sorry. Can you please repeat the
21 question.

22 BY MR. GREENBERG:

23 Q. When an informant or if an informant told you during your
24 work on the Pharmacare matter in 2012 and 2013, that they were
25 in a heated financial dispute with their employer, you would

1 need to corroborate that informant's information before relying
2 on it, right?

3 A. I think we handled all witnesses the same, information
4 that we were given, if we could corroborate it, we did. Or
5 tried to.

6 Q. I want to make sure we're clear here. Are you saying,
7 then, that it would make no difference whether or not a witness
8 told you that they were in a heated financial dispute with
9 their employer?

10 A. I don't know how that changes their observations and their
11 day-to-day task that they did for the company.

12 Q. So you would -- but the point is, putting aside -- I know
13 you're saying you did this for every witness, but when a
14 witness -- if a witness told you that they were in a heated
15 financial dispute with their employer, you wouldn't see any
16 need for heightened corroboration?

17 A. Heightened?

18 Q. Like, extra corroboration.

19 A. No.

20 Q. It would be just like any other witness?

21 A. We would try and corroborate the information that they
22 gave us, yes.

23 Q. And if it couldn't be corroborated, you wouldn't use it,
24 right?

25 A. I'm not going to go say that. I don't know -- because I

1 don't know what you're referring to. If you can refresh my
2 memory by showing me a document or something, then maybe I can
3 provide you with a little more information. But speaking in
4 generalities and overall, it's hard to answer those questions.
5 You want me to say "yes" or "no," and I can't say "yes" or
6 "no" --

7 **Q.** Okay. So --

8 **A.** -- without having specific information.

9 **Q.** So depending on how you viewed the matter, you might
10 decide not to corroborate it?

11 **A.** No, that's not what I said, sir.

12 **THE COURT:** That's not what she said, Mr. Greenberg.

13 **THE WITNESS:** Thank you.

14 **THE COURT:** She's made her point clear. Whether it's
15 someone who wants to be a whistleblower or who has a financial
16 conflict with the employer, she's still going to corroborate.
17 And she's not going to come off of that, apparently.

18 And you're burning up time asking that same question over
19 and over.

20 **THE WITNESS:** Thank you.

21 **MR. GREENBERG:** All right, Your Honor. I'll move on.

22 **BY MR. GREENBERG:**

23 **Q.** Let's talk about Dan Walker. Okay?

24 **A.** Yes, sir.

25 **Q.** Dan Walker never told you, Ms. Arnold, that in

1 January 2013, while he was still working at Pharmacare, he
2 opened a competing pharmacy without telling Reddy Annappareddy,
3 right?

4 A. I don't recall. You said January of 2013, so 10 and a
5 half years. I don't recall. I'm not sure that I knew that
6 about Dan Walker.

7 Q. Let me sort of put aside the exact time frame, because I
8 know that, you know -- Dan Walker never told you at any time
9 before July 2013 or before, specifically, July 23rd, 2013, that
10 he had opened up a pharmacy that was competing with Pharmacare,
11 right?

12 A. I don't -- if you have memos that I can read or something
13 along those lines, I don't know that I -- I don't remember
14 interviews with Dan Walker, specifically.

15 Q. You never asked Dan Walker whether he had any financial
16 interest in what he was reporting, right?

17 A. I think he did state something to the effect of when he
18 was hired. He did have -- was given 1 percent or something,
19 and then that was to increase. So I think there was some
20 monetary bonuses, something to that effect. But without being
21 able to read memos, I can't say that I -- I don't remember the
22 interviews.

23 Q. Ms. Arnold, please listen to the words of my question,
24 okay, and just answer my question. All right?

25 Dan Walker never told you that he had a financial interest

1 in Mr. Annappareddy getting prosecuted, did he?

2 A. I don't recall interviews with Dan Walker, so I cannot
3 speak to that.

4 Q. And Dan Walker, at no time, told you, before July 23rd,
5 2013, that he was under a contract with Pharmacare that he
6 couldn't open up his own new pharmacy to compete unless
7 Pharmacare was shut down, right?

8 A. I don't recall interviews with Dan Walker, so I can't
9 answer these questions unless you can show me memos --

10 Q. Okay.

11 A. -- that I can read or documents that you may have that
12 would refresh my memory.

13 Q. And so whether it's Dan Walker told you or whether anybody
14 else told you, you didn't know, as of July 2013 that Dan Walker
15 had opened up a competing pharmacy already?

16 A. I don't know if I knew that or not because I don't recall
17 these interviews with Dan Walker.

18 Q. I'm not asking about only the interviews, ma'am. I'm
19 asking -- you didn't know from any source, whether interview or
20 otherwise --

21 A. I don't recall if I knew that information or not.

22 Q. Can I finish the question, please?

23 A. Sure. I apologize.

24 Q. Ma'am, you didn't know, whether from an interview or
25 otherwise, that Dan Walker had opened up a competing pharmacy

1 in Maryland without telling Mr. Annappareddy, right?

2 A. I do not recall any of that information. Whether I knew
3 it or not, I do not recall that information today.

4 Q. And you didn't know that that competing pharmacy had
5 multiple people who used to work at Pharmacare, right?

6 A. I don't recall any of that. So I don't recall the
7 interviews with Dan or some of these other employees. If you
8 would please show me some memos or documentation that may
9 refresh my recollection, I'd be happy to look at them and read
10 them and maybe be able to give a better answer. But the only
11 answer I have for you is that I don't remember a lot of these
12 interviews and that information from 10 years ago. I'm sorry.

13 Q. Do you recall anyone telling you before July 23rd, 2013,
14 about a pharmacy named Physicians Rx in Greenbelt, Maryland?

15 A. Is there a document that you're referring to that somebody
16 did tell me that that I can review?

17 Q. I'm just asking you right now, do you remember that?

18 A. I do not remember most of the interviews from that time
19 period to have that recall today.

20 Q. Okay. Let's put it this way, if you had known as of --
21 before July 23rd, 2013, that Dan Walker or anyone else you were
22 relying on had opened up a competing pharmacy, that's something
23 you would have shared with the other investigation members,
24 right?

25 A. If Dan Walker had opened a competing pharmacy, those are

1 your words -- what makes it a competing pharmacy? Can you
2 answer that for me?

3 Q. Another pharmacy that would serve at least some of the
4 same patients that Pharmacare would serve.

5 A. So the HIV Med-4s?

6 Q. Sure.

7 A. In a different -- in Greenbelt, not in Baltimore City?
8 How is that competing?

9 Q. Let's just say in Maryland.

10 A. I don't recall any of this information. Whether or not
11 any of this information was shared with the team, I don't have
12 that recollection today.

13 MR. GREENBERG: Your Honor, let me confer briefly with
14 counsel.

15 (Counsel conferring.)

16 BY MR. GREENBERG:

17 Q. Ms. Arnold, you testified in response to questions from
18 Government counsel that you personally spoke with a lot of
19 transient, homeless patients with HIV, right?

20 A. I don't know that I used the word "a lot." But did I do
21 some interviews with Medicaid recipients, yes.

22 Q. Okay. But the fact is, you didn't speak with a single HIV
23 patient at any place other than their home in November 2012,
24 right?

25 A. No, that's not true.

1 Q. Okay. You did not interview -- you and the investigation
2 team, collectively, did not interview a single person at any
3 place outside their residence.

4 A. That's not true. I just said that.

5 Q. Okay. Let's put it this way, any such interview that was
6 done of a HIV patient at a location other than a residence,
7 that would be documented in the file, right?

8 A. The interview would have been documented.

9 MR. GREENBERG: Nothing further for this witness, Your
10 Honor.

11 THE COURT: Any additional questioning?

12 MR. EISER: Just one, Your Honor. Well, two.

13 - - -

14 **RECROSS-EXAMINATION**

15 - - -

16 BY MR. EISER:

17 Q. What was the patient's name that you interviewed outside
18 their home?

19 A. I remember there was one, Anita Mayers or Miers, and she
20 was in a nursing facility. And I remember it about broke my
21 heart because the only thing she was asking for was fruit. She
22 didn't have enough money to buy fruit. And the facility wasn't
23 giving them fruit, I guess.

24 And then there was another -- I don't remember his name.
25 But there was a gentleman who had a court date, and we actually

1 were able to interview him in the basement of the court. We
2 weren't sure he was going to show up. But since he was
3 homeless, we were able to meet him at the courthouse and
4 conducted an interview in the basement of the courthouse. I
5 don't remember his name, though.

6 **Q.** Last question: Would a -- based on your experience, a
7 pharmacy in Bel Air, Maryland, or would a pharmacy in
8 Greenbelt, Maryland, be considered a competitor and able to
9 steal customers from a pharmacy in Bel Air, some 60 miles away?

10 **A.** I don't understand how that's competing. And it's my
11 understanding that an individual can use whatever pharmacy they
12 choose to use.

13 **MR. EISER:** Okay. Thank you.

14 **THE COURT:** All right. Anything further?

15 Thank you very much --

16 **MR. GREENBERG:** Your Honor, may I just have a quick --
17 I don't think so, but let me check something real quickly.

18 Nothing further, Your Honor.

19 **THE COURT:** All right. Thank you. You're excused.

20 **THE WITNESS:** Thank you, Your Honor.

21 (Witness exits.)

22 **THE COURT:** Please call your next witness.

23 **MR. GREENBERG:** I believe, Your Honor, we agreed that
24 the Government will now call Mr. DiPietro, Judge DiPietro.

25 **MS. FARBER:** Yes, Your Honor. The defense calls

1 Judge Michael DiPietro.

2 **THE COURT:** Let me ask, am I correct to understand the
3 Plaintiff is finished with its case in chief except for
4 Wilkinson, Pascale, and Mr. Annappareddy?

5 **MR. GREENBERG:** Oh, actually, no. The other one is,
6 based on the discussion yesterday, in addition,
7 Professor Fassett, our pharmacy expert.

8 **THE COURT:** Right. But by agreement, we're going to
9 call out of turn a Government witness now.

10 **MR. GREENBERG:** Yeah. And actually, also, I should
11 say that based on the conversations yesterday, we plan to call
12 Dr. Vaidya and Ernest McCray in our case in chief to avoid any
13 rebuttal concerns. And we'd ask that Vipin Patel and Pragna
14 Patel be considered for that purpose as well.

15 **THE COURT:** All right. Very good.
16 Bring in the witness.

17 **MR. GREENBERG:** Your Honor, I should also add that
18 we're still in the process of trying to communicate with
19 additional potential witnesses to respond to evidence and
20 arguments the Government has presented. But this is what we
21 have right now.

22 **THE COURT:** All right. Well, I was just trying to
23 make it clear that we're now switching over to a Defendant's
24 witness. We're taking a witness out of order, out of turn, as
25 part of the defense case in chief. That's all I was saying.

1 **MR. GREENBERG:** Yes, Your Honor.

2 **THE COURT:** By agreement, with no objection, correct?

3 **MR. GREENBERG:** Correct. No objection.

4 **THE COURT:** All right.

5 Go ahead.

6 **THE CLERK:** Sir, please raise your right hand.

7 (Witness sworn.)

8 **THE CLERK:** You may be seated.

9 And for the record, could you please state and spell your
10 first and last name.

11 **THE WITNESS:** My name is Michael DiPietro,
12 M-I-C-H-A-E-L. Last name D-I- capital P-I-E-T-R-O.

13 **THE CLERK:** Thank you.

14 - - -

15 **DIRECT EXAMINATION**

16 - - -

17 **BY MS. FARBER:**

18 **Q.** Good morning.

19 **A.** Good morning.

20 **Q.** What is your current profession, sir?

21 **A.** Well, I am an associate judge for the circuit court of
22 Baltimore City.

23 **Q.** When did you become a judge?

24 **A.** I took the oath, I think, on March 21st, 22nd of 2014.

25 **Q.** As a judge, what kinds of cases do you preside over?

1 A. Well, right now I am the judge in charge of our family
2 division, so I've been handling family matters exclusively for
3 the last three and a half years.

4 Prior to that, I was in the family division for one year.

5 And most of my other time was spent handling civil
6 matters. Let's put it that way.

7 Q. And did you have any time spent handling criminal matters
8 as a judge?

9 A. Yes.

10 Q. Please describe your employment history since graduating
11 law school.

12 A. Okay. Very well. After law school, I had the privilege
13 of working for the Honorable Raymond Kane, circuit court judge
14 here in Howard County. I believe it was in August of 1986 that
15 I was hired as an assistant state's attorney in Baltimore
16 County, Maryland, a position I held for close to seven years, I
17 believe.

18 Thereafter, I became an assistant attorney general at the
19 Maryland Office of Attorney General, assigned to the Criminal
20 Investigations Division. And I left that position, I believe,
21 in March of 2000 to become an assistant U.S. attorney.

22 Q. Before becoming a judge and that employment history that
23 you described, did you have occasion to work on both criminal
24 and civil matters?

25 A. Yes. As an assistant state's attorney, I handled criminal

1 matters exclusively. In the Attorney General's Office, the
2 same, exclusively criminal matters. So I have about 14 years
3 of criminal practice experience. And I have, roughly, 14 years
4 of civil practice experience.

5 Q. Where were you employed in June of 2012?

6 A. I was an Assistant U.S. Attorney here in the District of
7 Maryland.

8 Q. And when did you leave your position as assistant U.S.
9 attorney in Maryland?

10 A. It was, I think, the day before I was sworn in as a judge.
11 I don't recall any downtime between the two positions.

12 Q. What year was that?

13 A. That was 2014, March, again, 20th, 21st of 2014.

14 Q. As an assistant U.S. attorney, or AUSA, did you have a
15 particular specialty?

16 A. Yes. So I was assigned to the civil division the entirety
17 of my career in the U.S. Attorney's Office. The first three,
18 four, five years I was handling defensive matters, employment
19 description matters, tort claims, and the like.

20 As time moved forward, I became involved in our
21 Affirmative Civil Enforcement matters. And I think for the
22 last eight, perhaps nine, years, I devoted most of my time to
23 those matters.

24 Q. Affirmative Civil Enforcement, is that also called ACE?

25 A. Yes.

1 Q. What is Affirmative Civil Enforcement?

2 A. Well, Affirmative Civil Enforcement are the use of
3 statutes and even common law in which the government would
4 attempt to right a wrong through civil processes as opposed to
5 criminal processes. Primary among them was the use of the
6 False Claims Act.

7 Q. As an AUSA, have you ever worked on a case that originated
8 as a *qui tam*?

9 A. Yes.

10 Q. How many, approximately?

11 A. I really can't say, but it was dozens.

12 Q. How did you first get involved in the Annappareddy
13 investigation?

14 A. Well, the process at the time, our civil division chief,
15 ultimately the *qui tam* cases as filed in the district would
16 make their way to the civil division. And our civil division
17 chief, Mr. Loucks, would typically assign a *qui tam* matter to
18 an AUSA or perhaps sometimes two AUSAs to work on.

19 Q. And is that how the Annappareddy case came to you?

20 A. Yes.

21 Q. Was the Annappareddy case a *qui tam*?

22 A. Yes.

23 Q. Did you know who Mr. Annappareddy was before the *qui tam*
24 came in?

25 A. No.

1 Q. Did you have any kind of personal animosity towards him?

2 A. No.

3 Q. Did you attend a meeting with the relator in the

4 Annappareddy *qui tam* named Dennis Tokofsky?

5 A. Yes, I did.

6 Q. Do you recall that meeting?

7 A. Independently, no. But I was provided with a summary memo
8 of the meeting, so that has refreshed my memory about the
9 events. I mean, if Mr. Tokofsky walked in here today, I would
10 not recognize him.

11 Q. I'm displaying what has been entered into evidence as
12 Defense Exhibit 7. This is a memo dated September 5th, 2012.

13 Is this the memo you're referring to, Judge DiPietro?

14 A. Yes.

15 Q. Do you recall having an impression one way or the other
16 about Mr. Tokofsky's credibility at that meeting?

17 A. Credibility, perhaps not. But he had very detailed
18 information about the operations of the Pharmicare pharmacy
19 chain and a very full understanding of pharmacy operations. So
20 in that sense, I found what he was telling us to have
21 authority.

22 Q. What did you mean when you just said "Credibility, perhaps
23 not"? Were you saying you didn't recall, or were you saying he
24 was not credible, or something else?

25 A. Oh, no, no --

1 **MR. GREENBERG:** Objection, leading.

2 **THE WITNESS:** -- I'm not saying he was --

3 **MR. GREENBERG:** Objection. Leading.

4 **THE COURT:** She was just asking him to clarify what he
5 meant.

6 Go ahead.

7 Overruled.

8 **BY MS. FARBER:**

9 **Q.** You can answer, Judge.

10 **A.** I don't know if I had any particular thoughts at that time
11 about his credibility or lack thereof. What I was expressing
12 was that he provided the group with very detailed information
13 about the operations of the Pharmacare enterprise, and he also
14 had significant experience in the pharmacy, retail pharmacy
15 industry.

16 So I guess the bottom line is, he seemed to know what he
17 was talking about.

18 **Q.** What responsibility, if any, did you have for a damages
19 analysis in the Annappareddy case?

20 **A.** Well, one of the issues here was to attempt to confirm
21 Ms. Tokofsky's assertions through a review of billing
22 information and supplier information. So my role in damages
23 was to, along with others, to develop a process by which we
24 would gather information from key sources, put that information
25 into a usable format and, ultimately, attempt to discern,

1 through reviewing those records, whether Mr. Tokofsky's
2 assertion had merit.

3 So, more specifically, the primary assertion was that --
4 well, among many assertions, but the most significant assertion
5 was that the pharmacy -- that there were many customers of the
6 pharmacy who failed to pick up their prescriptions in the
7 allotted time, 10 days, and those products would be returned to
8 the pharmacy. And that the pharmacy was required, under law,
9 to reverse what -- any charges it made to a private insurance
10 company, Maryland Medicaid, or the like, because the patient
11 never received the medication.

12 So the thinking was, if we could examine particular
13 medications and determine whether, effectively, the pharmacy
14 billed payors for more dosage units than the company actually
15 purchased from drug distribution companies, Cardinal Health and
16 other major suppliers, then there may be some there.

17 **Q.** Now, you mentioned three steps in the process here. And
18 the first thing you had was "gather information." So tell us
19 about that step, what were you all doing to gather information?

20 **A.** Well, the first step would be to obtain payment
21 information from sources that appeared to be the likely
22 victims, if you will, of this conduct. The Maryland Medicaid
23 Program, for instance. I think the MADAP program was a
24 separate program which paid for AIDS-related medications.

25 We also attempted to or did obtain information from

1 federal employee health benefits. I believe we were able to
2 obtain information from the VA. And, of course, other Medicaid
3 units across the region. Because the pharmacy had an outlet in
4 Pennsylvania, it had a pharmacy in the District of Columbia,
5 and at least one, perhaps two, in North Carolina.

6 Q. You also mentioned, after gathering information, putting
7 the information into usable format. Can you say more about
8 that?

9 A. Well, certainly, the varying payors maintained this data
10 in different ways. And they -- "they" being the providers of
11 the information -- were able to convert that information into,
12 like, Excel-spreadsheet format. And we, the government, wanted
13 to make sure that we had all, you know, the same columns for
14 each payor in the same order so we could ultimately, you know,
15 combine that data, if needed, rather than have it all separated
16 into different tabs in a spreadsheet.

17 Q. The third thing you mentioned was to try to discern if the
18 relator's assertions had merit. Can you say more about what
19 you meant by that.

20 A. Sure. Well, the primary assertion was that --

21 THE WITNESS: -- like I just explained, Judge --
22 -- that the company was not reversing charges to paying
23 entities, and thus collecting money for prescription
24 medications that were not, ultimately, received by the
25 patients.

1 The way to discern -- or one way to discern whether that
2 was occurring, beyond interviewing witnesses, employees of the
3 company, was to determine whether there was more dosage units
4 of a particular drug being billed to payors -- Medicaid
5 program, for example -- than were actually purchased by the
6 pharmacy as a whole from medication wholesalers, again,
7 Cardinal Health, Amerisource Bergen. I believe there were,
8 approximately, a dozen or so wholesalers from whom Pharmacare
9 routinely purchased medication.

10 **BY MS. FARBER:**

11 **Q.** Judge DiPietro, did you come into this investigation with
12 a preset idea about whether Mr. Tokofsky's assertions had
13 merit?

14 **A.** No.

15 **Q.** Are you aware of anyone else on the investigative team
16 that had a preset idea about how this investigation would
17 result?

18 **MR. GREENBERG:** Objection. The witness can't know
19 what other people are thinking.

20 **MS. FARBER:** Your Honor, I asked if he's aware.

21 **THE COURT:** She said "do you know."

22 Overruled.

23 **BY MS. FARBER:**

24 **Q.** You can answer the question, Judge DiPietro.

25 **A.** No.

1 Q. Now, you mentioned, in your previous response, that you
2 were looking at dosage units of a particular drug. Did I -- is
3 that correct?

4 A. Right.

5 Q. Why was it important to look at the dosage units of
6 particular drugs separately?

7 A. Well, I can't recall if there was any assertion that --
8 I'll just make this up, acetaminophen 5 milligrams was being
9 filled as acetaminophen 10 milligrams and being sold to a
10 customer --

11 Q. So in other words --

12 A. Yeah, in other words, in order to do this correctly, you
13 really have to look at a very granular level.

14 Q. So could fraud happen on one dosage of one medication and
15 not another?

16 A. Oh, absolutely.

17 Q. Was it important to you to be as accurate as possible in
18 conducting the damages analysis?

19 A. Yes.

20 Q. Why is that?

21 A. Well, I mean, we're held to a higher standard. We are, as
22 I've kind of paraphrased, not a penny more, not a penny less.
23 Whatever the damage amount is, so be it. If it turned out that
24 an analysis showed nominal damages, so be it. If it showed
25 large damages, so be it.

1 Q. Do you recall or have a recollection of how you viewed
2 AIDS drugs in the scope of the investigation or the analysis?

3 A. When you say "you," the team, or me personally?

4 Q. You -- you, personally, first.

5 A. I seem to recall that the AIDS-related medications were
6 very expensive. And I believe I recall that Mr. Tokofsky said
7 that there were a fair number of customers or patients who were
8 not picking up their AIDS medication from these various
9 outlets. So in terms of loss to the government, one would
10 attempt to focus on more expensive drugs than a drug where the
11 reimbursement to the pharmacy was, you know, \$3.

12 Q. Were AIDS drugs the only drugs that the team was
13 interested in, in this investigation?

14 A. No.

15 Q. Why not?

16 A. Well, it was our understanding, the way the business was
17 structured, that Pharmacare had created affiliations with
18 clinics here in Baltimore and in other cities. So much so that
19 they would actually have a representative who was on-site at
20 these clinics. And when a patient would see their physician or
21 a PA and would receive a prescription, the Pharmacare
22 representative would be there to, effectively, take the
23 prescription from the patient. A representative would then fax
24 that prescription up to the main office in Harford County where
25 the prescription would be filled. And then the prescription

1 would be shuttled to the -- to that location, you know, ABC,
2 you know, mental health clinic.

3 So it was our understanding that the patient base who are
4 cared for by these clinics, had a number of, you know,
5 healthcare problems. They had mental healthcare issues. They
6 had addiction issues. Some of them had HIV and other health
7 issues. But it was the mental health medications, the HIV
8 medications, and the medications that were prescribed to assist
9 people with their addiction which, I believe, if I recall, were
10 the primary medications prescribed by these clinics.

11 Q. Judge DiPietro, let's talk about Robert Mosley. Was
12 Robert Mosley -- what was his role in working on the damages
13 analysis that you all were conducting?

14 A. Well, Agent Mosley, his role was to, effectively, help us
15 getting information. So, for instance, with Medicare, and
16 since he's an HHS-OIG agent, he would be able to make contact
17 with those in Medicare who could pull data about any Medicare
18 payments to Pharmacare for prescription medications. He also
19 assisted in gathering that information, I believe, from OPM,
20 maybe the VA, as well as the D.C. Medicaid unit in conjunction
21 with their Medicaid Fraud Unit and perhaps North Carolina.

22 So he was -- I don't mean this pejoratively, but he was,
23 like, our gofer to get things for us.

24 Q. Would Agent Mosley be deduplicating data on the
25 Annappareddy investigation?

1 A. No.

2 Q. Would Agent Mosley be responsible for cleaning up data
3 that he received in this investigation?

4 A. No.

5 Q. Would Agent Mosley be responsible for analyzing data he
6 received in this investigation?

7 A. No.

8 Q. Would Agent Mosley be creating spreadsheets of data in the
9 Annappareddy investigation?

10 A. No.

11 Q. Would Agent Mosley be independently deciding what
12 information to give to MEDIC?

13 A. No.

14 Q. What was Jeremy Dykes's role in working on the damages
15 analysis?

16 A. Well, Jeremy, if memory serves me --

17 THE WITNESS: -- at that time, Your Honor, Maryland
18 had past its own *qui tam* False Claims Act statute. And I
19 believe the Maryland Medicaid Fraud Unit was in a period of
20 transition where they were, basically separating out a civil
21 enforcement unit from their previous sole role as criminal
22 enforcers.

23 So Jeremy, effectively, would have been my counterpart on
24 the civil side for damages to the state of Maryland.

25

1 BY MS. FARBER:

2 Q. Did Agent Maura Lating work on the damages analysis with
3 you?

4 A. No. I -- no.

5 Q. Now, I'd like to direct your attention to May of 2013.
6 Was MEDIC working on shortage numbers at that time?

7 A. I believe so, at that point in time. We probably
8 collected enough information from -- that was needed to do that
9 sort of work.

10 Q. As of May of 2013, did MEDIC agree to consider all of the
11 data that you had?

12 A. I seem to recall that -- if I recall correctly, MEDIC was
13 a contractor with HHS. And they primarily worked with HHS,
14 OIG, or other parts of the agency, on overpayments in the
15 Medicare program.

16 So this was all Medicaid data, which I believe that they
17 were -- they were comfortable with using. But when it came --
18 at the time, Maryland and other states were shifting from a
19 traditional fee-for-service model for Medicaid to a managed
20 care organization model where the state would pay, you know,
21 Johns Hopkins Healthcare a flat fee to provide medical care for
22 a Medicaid recipient.

23 So the MCOs would be responsible for reimbursing
24 healthcare providers and paying pharmacy bills.

25 Q. I'm showing you what's been entered into evidence as

1 Defense Exhibit 32.

2 A. Okay. Could you slide that down a little bit so I can see
3 the top.

4 Q. Yes. I'm just showing the exhibit sticker for the record.

5 A. Oh, yes. Thank you.

6 Q. So Defense 32. And this is a May 3rd, 2013, email from
7 you. Do you see that, Your Honor?

8 A. Yes.

9 Q. Now, this references -- you start this email by saying,
10 "We spoke about them today about the in-and-out analysis."

11 Who are you talking about? Who's "them"?

12 A. Well, the subject is "Discussion with the CMS Data
13 People," which would have been MEDIC.

14 Q. Now, you're first bullet point here about a per-store
15 analysis and a global analysis, can you tell us more about what
16 you meant there?

17 A. Right. Well, it was our understanding that as Pharmacare
18 grew and established retail outlets throughout the region, that
19 those retail outlets would be ordering medications to stock
20 their shelves from these distributors. But it was also our
21 understanding that there was a lot of shipments from the
22 Harford County facility to these outlets across the region.

23 So what the MEDICs folks -- they were doing a per-store
24 analysis. Now, the medications that appear to be delivered to
25 the store by a drug distribution company vis-à-vis the billings

1 to the various entities from that store. And I say which is
2 fine, but if we want to account for these internal transfers
3 for which we didn't know if there would be records of, we could
4 have rolled it all up into a global review.

5 So if we were looking at a particular drug, you could look
6 at it on an individual store basis, in and out at each store,
7 and then combine it to all the stores.

8 And it was a way to make sure we were prepared for the
9 argument that, you know, store number one has this massive
10 surplus of a particular drug, yet stores two through nine,
11 there appears to have been overbilling, for lack of better
12 terms.

13 So when you combine it all, you know, they all balance
14 out.

15 **Q.** Judge DiPietro, is what you're saying in this email that a
16 per-store analysis is not useful or informative?

17 **MR. GREENBERG:** Objection, leading.

18 **MS. FARBER:** Your Honor, it's not leading.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** Well, I can't recall if MEDICs wanted to
21 just do a per-store analysis and leave it up to our team to
22 roll it all up or not. I can't recall what their scope of
23 responsibility in terms -- they're an independent contractor,
24 so we really couldn't ask them to do stuff that they weren't
25 contracted to do, if memory serves here.

1 But, yeah, the per-store analysis is certainly
2 interesting. But the roll up would be more telling.

3 **BY MS. FARBER:**

4 **Q.** Is the per-store analysis informative in any way?

5 **A.** Yes.

6 **Q.** Now, did you receive a preliminary report of MEDIC's
7 analysis on or around May 9th, 2013?

8 **A.** We did. I can't remember the date.

9 **Q.** Okay.

10 **A.** But that last exhibit, I can't remember the date of that
11 email. So that was May 3rd.

12 **Q.** Judge DiPietro, I'm going to show you what's been entered
13 into evidence as Defense Exhibit 38. And I'm directing your
14 attention to the email towards the bottom here from Don DeGroff
15 that's dated May 9th, 2013.

16 Do you see that?

17 **A.** Yes.

18 **Q.** Does this look to be MEDIC's preliminary report of their
19 analysis?

20 **A.** Yes. It's -- yes, it's them telling us what their
21 preliminary review showed.

22 **Q.** And you received this email, up here at the top of Defense
23 Exhibit 38. Do you see your name over there?

24 **A.** Yes. Agent Mosley sent it to a number of people working
25 on this matter.

1 Q. And these preliminary numbers all show shortages at each
2 location; is that right?

3 A. Yes.

4 Now, going back to the prior email. I believe that, to
5 just kind of define the scope of work, MEDICs was looking at a
6 limited number of medications. I can't recall what I said, but
7 I think it was the 207 medications with -- it was top 25 drugs
8 by sales, including all strengths. So, obviously, many of
9 these drugs had several strengths. So it's 207 different
10 items.

11 Q. Okay. Now, I'd like to direct your attention, Judge, to
12 Plaintiff's Exhibit 42, which I'll put up on the screen. This
13 has been admitted.

14 This is a May 17th, 2013, email from Jeremy Dykes and
15 you're included on that email.

16 Do you see that?

17 A. Okay. "Attached a summary of the data provided by" --
18 (witness reading).

19 Okay.

20 Q. Judge DiPietro, I'm going to show you, I'm going to page
21 through this spreadsheet, and if you'd like to look at it
22 independently, you have two binders on the witness stand. The
23 one that's on the ledge there, without a cover on it, that's
24 Plaintiff's exhibit binder, and at Tab 42, you'll find this
25 same document.

1 A. Thank you.

2 Q. So I'll page through it on the projector, but if you'd
3 like to look independently, that's where you can find it.

4 So the -- Pages 2 and 3 of Plaintiff's Exhibit 42 contain
5 a spreadsheet listing a number of different drugs and dosages.

6 Do you see that?

7 A. Yes. Starts with "Abilify" --

8 Q. Yes.

9 A. -- at the top.

10 Q. Was this the spreadsheet Jeremy Dykes created?

11 A. I believe so.

12 Q. Now, I'd like to direct your attention to the number at
13 the bottom of Plaintiff's Exhibit 42, Page 3, where it says
14 "Grand Total." And then the number is --

15 A. One second. I didn't do what I tell everyone to do --
16 turn off my cell phone.

17 Q. I'm sorry, what was that, Your Honor?

18 A. I didn't do what I tell everyone to do in court, which is,
19 "Turn off your cell phone."

20 My apologies.

21 So "Grand Total," yes. Okay.

22 Q. Okay. And so do you see this number, \$1,370,463.75?

23 A. Yes.

24 Q. You can see the column headings on the previous page. So
25 does that number that I just read -- what does that indicate?

1 Or what does that measure?

2 A. Well, let me back up. If you look at column T, some of
3 PED [sic] TRICARE and Medicaid Quantity -- okay.

4 So, again, in looking at these medications, if you look at
5 it line by line, there's certain medications, which, at least
6 in this preliminary review, suggest that there is not
7 overbilling.

8 However, there's several medications which suggest there
9 was overbilling.

10 Q. And --

11 A. So the grand total, that's just a meaningless number, that
12 \$1.37 million number.

13 Q. So this grand total, does this combine every single dosage
14 of every single drug together into one number?

15 A. That's my understanding.

16 Q. So would this grand total account for the possibility that
17 fraud was happening on some dosages of some drugs and not on
18 others?

19 A. Not at all.

20 Q. Why didn't this spreadsheet, and this number end the
21 investigation right there, right there and then?

22 A. Well, again, my recollection is that we may or may not
23 have had the D.C. -- District of Columbia Medicaid payment data
24 at the time nor other payors. Furthermore, as I said earlier,
25 I'm rather certain that the MEDICs folks did not want to touch

1 Maryland MCO data nor, perhaps, District of Columbia MCO data.

2 So this is just a very preliminary review at this
3 juncture.

4 Q. What did you expect would happen to the numbers when that
5 missing data was added?

6 A. Oh, they would change dramatically. It would only get
7 worse for Pharmacare.

8 In other words, if you look at the second page, there's a
9 line, 446, Suboxone, 2-milligram version, it shows,
10 effectively, that the Pharmacare enterprise had
11 858,000-dollars' worth of, you know, medication on the shelf,
12 which would make no sense at all. Why would you have that much
13 of one medication sitting around in inventory?

14 Q. And did the team or members of the team meet to discuss
15 the data that formed the basis of Jeremy Dykes' summary that we
16 just saw?

17 A. We either met or had a conference call to discuss how
18 Jeremy went about rolling up this information, yes.

19 Q. I'm showing you what's been entered into evidence as
20 Defense Exhibit 42. This is a May 20th, 2013, email from Cathy
21 Pascale, and you're included in the recipients.

22 Do you see that?

23 A. Yes.

24 Q. And do you see where she says "Jeremy Dykes, Michael
25 DiPietro, Robert Mosley and I met this morning"?

1 A. Yes.

2 Q. And she says you reviewed the in-and-out analysis that you
3 received on Friday.

4 Do you see that?

5 A. Right. Now, the in-and-out analysis, I don't know if
6 that's Jeremy's summary or the entirety of what MEDICs had
7 provided, but nonetheless.

8 Q. Well, I'll briefly refresh your recollection on that.
9 Showing you Plaintiff's Exhibit 42. We looked at Jeremy Dykes'
10 spreadsheet. And then do you see that there are other
11 spreadsheets?

12 A. Yeah. There's a rather lengthy spreadsheet, I guess, that
13 maybe was a tab to what Jeremy had sent. So what Jeremy did --
14 so, for example, line 3, he did a roll up of Abilify,
15 1 milligram.

16 Q. You're referring to Plaintiff's Exhibit 42 at Page 2 where
17 there's a -- you said there's a roll up of Abilify?

18 A. Well, yeah, let's take -- yeah, Abilify 1 milligram.
19 So --

20 Q. Judge, does it look like the data that Jeremy Dykes
21 summarized here came from the other spreadsheets that are in
22 the Plaintiff's Exhibit 42?

23 A. Yes.

24 Q. Okay. Now, let's -- directing your attention back to
25 Defense Exhibit 42, this is the May 20th email from Cathy

1 Pascale.

2 A. Right.

3 Q. What she notes here is, "As Mike said at our meeting, we
4 still only have half the story."

5 Can you explain that?

6 A. Well, my recollection is at the time, we did not have
7 information from all the entities that paid Pharmacare for
8 prescription medications. So, I mean, euphemistically, half
9 the story. But it may have been half, it may have been
10 three-quarters, it may have been one quarter. We just didn't
11 know at that time.

12 Q. And what would that missing information have done to the
13 numbers that you were looking at?

14 A. Well, the more payor information you put into this mix, if
15 you will, again, the numbers would only get worse for
16 Pharmacare in terms of showing that the company billed
17 government entities for more dosage units than they actually
18 even possessed.

19 Q. Judge DiPietro, I'm going to direct your attention to
20 what's been entered into evidence as Plaintiff's Exhibit 47.
21 And the first page of that Plaintiff's Exhibit 47 is an email
22 from you, Michael DiPietro, dated May 31st, 2013.

23 Do you see that?

24 A. May 31st, okay. Okay. Yes.

25 Q. All right. Now, I'd like to direct your attention to the

1 attachment that you've included here. Do you see where it says
2 "SummaryofExpertReviewMAD.xlsx."

3 Do you see that?

4 A. Yes. MAD would be my initials so I would know and others
5 would know that it was something that I had -- I wouldn't say
6 created, but played with.

7 Q. And would Robert Mosley have created that spreadsheet;
8 that is, Summary of Exhibit [sic] Review MAD?

9 A. No, absolutely not.

10 Q. And that spreadsheet, Summary of Exhibit Review, that
11 is -- that starts at the -- that starts at the page, that says
12 in the header, "Page 3 of 11"; is that right?

13 A. Yes. All right. So --

14 Q. I'm just asking, if this the -- the spreadsheet you
15 created, are we looking at the first page of it?

16 A. Yeah. I believe I created this document.

17 Q. Okay. And I'm directing your attention to approximately
18 the middle of Plaintiff's Exhibit 47 on the page with the
19 header that says "Page 3 of 11," where you wrote "Old Emmorton
20 and Plumtree."

21 Do you see that?

22 A. Yes.

23 Q. Did you combine old Plumtree in this exhibit?

24 A. Yes.

25 Q. Why did you do that?

1 A. Well, it was our understanding that Old Emmorton was the
2 pharmacy's original, call it mother ship, main location, and
3 that the pharmacy was transitioning to moving that location to
4 a new location on Plumtree Road or Lane in Harford County.

5 And in reviewing that memo from Mr. -- our interview with
6 Mr. Tokofsky, it was no longer going to be a retail pharmacy,
7 that being Plumtree. Its sole purpose would be a closed
8 pharmacy; in other words, taking these prescriptions from these
9 clinics, filling them, and having drivers deliver them out to
10 the clinics for patient pickup.

11 So given that there were a number of movement of
12 medications from Old Emmorton to Plumtree, our understanding
13 being -- which I don't think they were very far from each
14 other, I think they were a couple blocks from each other, if my
15 memory serves me. We combined that. Because, effectively, it
16 was one place.

17 Q. So in your analysis here, does this account for transfers
18 between Old Emmorton and Plumtree?

19 A. Yes. Absolutely.

20 Q. Now, I'd like to direct your attention to the figure at
21 the bottom of your spreadsheet contained in Plaintiff's
22 Exhibit 47, this 2.6-million figure.

23 Do you see that?

24 A. Yes.

25 Q. Is that number suggestive of fraud?

1 A. Yes.

2 Q. Why do you say that?

3 A. Can we scroll up so I can see my headings --

4 Q. And if you'd like to look, this is in the binder with no
5 cover page.

6 A. And again it's exhibit --

7 Q. It's Exhibit 47.

8 A. Thank you.

9 Q. It's a little -- the text is a bit small if I zoom all the
10 way out.

11 But I can show you, Judge DiPietro --

12 A. Right. I was just looking --

13 Q. -- the column heading.

14 A. Right.

15 Q. So we were talking about that negative 2.6-million figure.

16 Is "Estimated Loss" the heading on that column?

17 A. Yes, "Estimated Loss."

18 Q. And so is that 2.6 million estimated -- why is that

19 2.6 million estimated loss suggestive of fraud?

20 A. Well -- well, let's take the District of Columbia store,
21 for example. If you go up. The estimated loss, the red
22 numbers, if you will, the 2.6 million is in addition to those
23 numbers. So at least at that time, at the District of Columbia
24 store, there were 65 of those 76 products examined. There
25 were, at least at that time, two products identified as -- with

1 shortages. In other words, there was more billing than what we
2 had saw in terms of shipments to that store from these
3 providers, Amerisource Bergen, Cardinal, Auburn,
4 Cardinal Health, and the like.

5 But note that we did not have D.C. Medicaid information.
6 We did not have DC MADAP information. And I guess it's a typo
7 when I said Maryland Medicare MCO because it's Maryland
8 Medicaid MCOs.

9 So I guess when we say estimated loss, once you're able to
10 add into this analysis the billings and payments to these other
11 entities, more likely than not, that \$2.6-million number will
12 go up unless, for some reason, there were no billings
13 whatsoever to these entities for these particular medications.

14 **MS. FARBER:** No further questions.

15 Well, excuse me. Let me confer with counsel.

16 (Counsel conferring.)

17 **MS. FARBER:** Thank you. No further questions at this
18 time.

19 **THE COURT:** It's time for our morning recess. It's
20 11:23. Let's take a 15-minute recess.

21 **THE CLERK:** All rise. This Honorable Court is now in
22 recess.

23 (Whereupon, a recess was taken from 11:23 a.m. to 11:39
24 a.m.)

25 **THE CLERK:** All rise. This Honorable Court resumes in

1 session.

2 THE COURT: Please be seated.

3 - - -

4 CROSS-EXAMINATION

5 - - -

6 BY MR. GREENBERG:

7 Q. Good morning, Judge DiPietro.

8 A. Good morning.

9 Q. Good to see you again.

10 A. Good to see you.

11 Q. Just to clarify the time frame of your background, it was
12 approximately July 1986 to August 1983 that you were an
13 assistant state's attorney in Baltimore County, right?

14 A. I think July or August of '86 through -- it was close to
15 or a little more than seven years.

16 Q. Okay. And then starting in approximately August of 1993,
17 you worked in the Maryland attorney's Office of the Attorney
18 General?

19 A. Yes.

20 Q. Can I just call that the "OAG"?

21 A. Yes.

22 Q. And you were in the OAG from approximately August of '93
23 to March of 2000, right?

24 A. Correct.

25 Q. And at that point in time, you became -- in March of 2000,

1 approximately, you became an assistant U.S. attorney in
2 Baltimore?

3 A. Yes.

4 Q. You mentioned with respect to your role in what you call
5 the damages analysis, that part of the process was gathering
6 information from different payors?

7 A. Yes.

8 Q. And those payors provided their Excel files in different
9 formats, right?

10 A. Well, they were all Excel files. But there may have
11 been -- you know, one entity may have had column A, where
12 another entity had it in a different column, but --

13 Q. I'm sorry, Judge DiPietro, I didn't ask that. Let me
14 reask --

15 A. Sure.

16 Q. -- the question and try to clarify.

17 So you testified on direct that you wanted to make sure
18 you had the same columns in the same order from the
19 wholesalers, I think.

20 A. Well, from wholesalers and from payors.

21 Q. Gotcha.

22 A. In other words, we didn't want to be adding the wrong
23 columns.

24 Q. And by different format, I didn't mean to suggest there
25 are different types of file formats. I meant there are

1 different Excel files from the payors and the wholesalers with
2 different numbers of columns, right?

3 A. More likely than not, yes.

4 Q. And because there were different numbers of columns in the
5 different Excel files from these various sources of
6 information, it would take a significant amount of time to --
7 it took a significant amount of time to align the columns to
8 match up?

9 A. I don't know if that's true or not.

10 Q. Okay. You mentioned that Pharmacare had representatives
11 that it sent -- and they worked at clinics, right?

12 A. Yes.

13 Q. There was no law or regulation condoning that at the time,
14 right?

15 A. I do not know. They were -- as I understand it, they were
16 there to obtain the hard copy prescription from the patient and
17 it was sent up to -- faxed up to the Harford County facility
18 for filling.

19 Q. But as of 2013, as far as you were aware, that was legal?

20 A. Well, was it a violation of a criminal law or the False
21 Claims Act? I don't think so. Whether it was a violation of
22 some pharmacy board regulation, I do not know.

23 Q. If the Maryland Board of Pharmacy approved of the
24 practice, then it would be legal, right?

25 MS. FARBER: Objection. Foundation, speculation.

1 **THE COURT:** What's the response?

2 **MR. GREENBERG:** The evidence will show that happened.

3 **THE COURT:** All right. I'll overrule it for now.

4 Go ahead.

5 **THE WITNESS:** Well, yeah, I assume that the Maryland
6 Pharmacy Board would be familiar with their own rules and
7 regulations, and if they approved such a practice, then so be
8 it.

9 **BY MR. GREENBERG:**

10 **Q.** I want to -- you were asked a number of questions about --
11 actually, let me first start with this.

12 I want to talk sort of about, just briefly,
13 Judge DiPietro, about your role in the investigation.

14 **A.** Sure.

15 **Q.** You were a civil AUSA in the U.S. Attorney's Office in
16 Baltimore, right?

17 **A.** Yes.

18 **Q.** So you were not involved in making a decision on whether
19 or not to obtain a search warrant for any location?

20 **A.** Correct.

21 **Q.** And you were not involved in any decision on whether or
22 not to obtain an indictment?

23 **A.** Correct.

24 **Q.** And, Judge DiPietro, you, as a civil AUSA, did not
25 interview any patient, correct?

1 A. Yeah. I don't recall interviewing any Pharmacare
2 customers, yes.

3 Q. In fact, you, Judge DiPietro, did not go out in the field
4 and interview anybody for this case, right?

5 A. Well, that's what the investigators do.

6 Q. So the answer is, you didn't do it.

7 A. I don't believe so, no.

8 Q. I want to turn to Plaintiff's Exhibit 47. You were asked
9 a number of questions about that.

10 So it's on the screen for your convenience,
11 Judge DiPietro. You can choose to either look at the binder or
12 the screen, okay?

13 A. Yes.

14 Q. Now, just so the record's clear, Plaintiff's Exhibit 47 is
15 an email that you sent when you were an AUSA on May 31st, 2013,
16 right?

17 A. Yes.

18 Q. And you attached a SummaryofExpertReviewMAD.xlsx, right?

19 A. Yes.

20 Q. And that was something that you created using the data
21 from MEDIC 1495?

22 A. I can't recall if that Summary of Expert Review was Jeremy
23 Dykes's document that I just took and, you know, played with,
24 or whether it was the actual analysis provided by MEDICs.

25 Q. All right. Well, let me sort of ask it differently then.

1 Thank you for clarifying that.

2 The original source of the data that you used, whether it
3 went through Jeremy Dykes or not, was from MEDIC 1495, correct?

4 A. Well, the original source of the data was the providers of
5 the data, Medicaid -- but they were -- yes, they collected --
6 they took this data and put it into a usable format.

7 Q. Right.

8 And remember how you testified about the spreadsheet that
9 Jeremy Dykes prepared May 17th, 2013?

10 A. Yes.

11 Q. And so that was using the data from MEDIC 1495, right?

12 A. I believe so, yes.

13 Q. So whether Jeremy Dykes contributed to this Excel file in
14 Plaintiff's Exhibit 47 or not, the data that was being analyzed
15 that you reviewed, Summary of Expert Review, that came from
16 MEDIC 1495?

17 A. I believe so. Is it 42?

18 Q. Plaintiff's Exhibit 47, maybe that's the confusion.

19 A. Forty-seven. Let me -- I just want --

20 Q. Yeah. Take your time.

21 A. So Pam Arnold of the Attorney General's Office appears to
22 have looked at this data and came up with some thoughts. And
23 then -- that was at 2:17 p.m. and -- on May 31st. And then,
24 look at me, I'm there at 10:35 at night doing that review.

25 Okay. Okay. Go ahead. Repeat the question, I'm sorry.

1 **MR. GREENBERG:** Sure.

2 If the court reporter could please read back the question.

3 (Reporter read back as requested.)

4 **THE WITNESS:** Right. The source of the data, the
5 source of the spreadsheet that we were working with, I believe,
6 came from MEDICs, yes.

7 **BY MR. GREENBERG:**

8 **Q.** MEDIC 1495?

9 **A.** MEDIC --

10 **Q.** You said "MEDICs," I want to clarify it's MEDIC 1495.

11 **A.** MEDIC 1495.

12 **Q.** Thank you for clarifying that, sir.

13 Now, in Plaintiff's Exhibit 47, you were asked about -- if
14 we could turn to the -- I guess it was referred to as Page 3 by
15 the ECF heading, ECF No. 255-3 at Page 3.

16 **A.** Yes.

17 **Q.** And you were asked some questions about that?

18 **A.** Yes.

19 **Q.** And I want to just ask you just a few questions about
20 this.

21 You testified that you combined Old Emmorton and Plumtree,
22 right?

23 **A.** For this review, yes.

24 **Q.** And do you see how under the column "Billing Data Used,"
25 the second from the right, that includes Maryland MADAP, the

1 Maryland AIDS Drug Assistance Program?

2 A. Yes.

3 Q. And you see this "Underestimated Loss" in the middle in
4 red all the way at the bottom it says \$2,672,068?

5 A. Yes.

6 Q. And you believed, Judge DiPietro -- let me rephrase the
7 question.

8 As of May 31st, 2013, and at all times thereafter, you
9 believed, based on the information you had available to you,
10 that the -- this Excel file that you prepared was accurate, for
11 what it represents?

12 A. Yes. I mean, it -- again, you can see the last column,
13 there's a lot of information that's still missing from this
14 review. But accurate in terms of the math? Yes.

15 Q. Just to sort of put it differently -- actually, let me
16 just sort of pause for a moment to see if I even need to get
17 into the other topic.

18 MR. GREENBERG: Judge DiPietro, we appreciate you
19 taking time out of your busy schedule to be here. Thank you.
20 No further questions.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: All right.

23 Any redirect?

24 MS. FARBER: No redirect.

25 THE COURT: All right.

1 Thank you very much. You're excused.

2 THE WITNESS: Nice to me you, sir.

3 THE COURT: Nice to meet you.

4 (Witness exits.)

5 THE COURT: Please call your next witness.

6 MR. EISER: United States calls James Ryan.

7 MR. GREENBERG: Yeah, maybe I should -- before the
8 witness comes in, it may actually be prudent just to, as a
9 reminder, that 106-page spreadsheet --

10 THE COURT: I was going to bring that up before we
11 start. The Ryan analysis, what --

12 Mr. Ryan, if you would step back out just a minute.

13 What was it referred to at trial, the Ryan chart, the Ryan
14 analysis?

15 MR. GREENBERG: Well, at trial, it was referred to as
16 the "Ryan analysis." It was prepared for trial based on, I
17 believe, primarily items found at Eloise Lane in August of
18 2013. And that was a separate search warrant that was issued
19 based on information that was only obtained as a result of the
20 Lating affidavit and the searches and seizures on July 25th,
21 2013, and the indictment of Mr. Annappareddy. But for that,
22 those events, they never would have gotten the Eloise Lane
23 stuff.

24 So the Ryan analysis is mainly about Eloise Lane. It
25 also, I think, has some items that were seized on July 25th,

1 2013. But it's all after-acquired evidence. And the main
2 issue, Your Honor, is that if he gets into that really at all,
3 we're going to have to do a very lengthy cross to show that the
4 Ryan analysis is false.

5 We've briefed that issue before Judge Russell. He didn't
6 rule on it because he determined he didn't need to and
7 dismissed the case with prejudice.

8 But, you know, I don't know the exact number of pages,
9 Your Honor, but I can tell you that we had a lengthy discussion
10 with many exhibits on that issue, and it would take a very long
11 time.

12 **THE COURT:** Mr. Eiser, I think you said yesterday you
13 weren't actually going to offer the analysis in, per se,
14 correct?

15 **MR. EISER:** Your Honor, first of all, the analysis
16 isn't -- wasn't just Eloise Lane. It was the search that
17 brings us here. And it was all pills at all locations and he
18 counted them up and, as we've said, it would be part of our
19 causation defense.

20 But in the interest of time, we're not going to ask about
21 it.

22 **THE COURT:** Very good.
23 All right. Please bring in the witness.
24 (Witness enters.)

25 **THE CLERK:** Sir, please remain standing and raise your

1 right hand.

2 (Witness sworn.)

3 **THE CLERK:** You may be seated.

4 - - -

5 **DIRECT EXAMINATION**

6 - - -

7 **BY MR. EISER:**

8 **Q.** Good morning, sir. Can you tell us your name.

9 **A.** James Patrick Ryan.

10 **Q.** And how are you employed today, sir?

11 **A.** I'm with the Defense Criminal Investigative Service for
12 the investigative arm of the Department of Defense, Office of
13 Inspector General.

14 **Q.** Try to speak a little bit slower for the reporter.

15 And what do you do in that role?

16 **A.** I investigate allegations against TRICARE for healthcare
17 fraud. I investigate procurement fraud and any matter relating
18 to Department of Defense benefits, property, persons, or money.

19 **Q.** Okay. Can you summarize, for the judge, your education.

20 **A.** Sure.

21 I have a master's degree, a couple of advanced
22 certifications --

23 **Q.** I'm sorry. What's the -- let's go back to college and
24 move forward. The degree and where you got it.

25 **A.** My undergraduate degree is from Kings College in

1 Wilkes-Barre, Pennsylvania, in accounting. My graduate degree
2 is through Central Michigan University, it's a Master's of
3 Science in Administration. And my certifications, I'm a
4 certified fraud examiner through the Association of Certified
5 Fraud Examiners. I'm also a certified information system
6 auditor and a certified cyber crime investigator through the
7 National White Collar Crime Center.

8 Q. Where were you born and raised?

9 A. Born and raised here outside of Baltimore, Maryland,
10 Baltimore County.

11 Q. Can you summarize your relevant work history before
12 joining the Defense Criminal Investigative Service.

13 A. Sure.

14 I started with the Department of Defense as an auditor in
15 June of 2003.

16 Q. What about before that, if there's anything relevant?

17 A. There was no relevant --

18 Q. Okay.

19 A. -- just college and summertime work.

20 Then after my work as an auditor, I became an agent with
21 the U.S. Army Criminal Investigation Command, their major
22 procurement fraud unit. I was there for a little over
23 three years, with one deployment to Kabul, Afghanistan prior to
24 joining the Defense Criminal Investigative Service. It'll be
25 11 years in November.

1 Q. Can you describe your training connected to the filing of
2 a search warrant affidavit.

3 A. Sure.

4 I'm a graduate of the Federal Law Enforcement Training
5 Center where we learned how to draft search warrants, in
6 addition to, over the last 14 years as an agent, drafting
7 search warrants.

8 Q. How many have you drafted?

9 A. I've personally drafted and sworn to at least seven, which
10 include email account affidavits, location affidavits, seizure
11 affidavits for funds. And I participated in more as a case
12 agent and had oversight as an acting supervisor at DCIS of
13 other warrants.

14 Q. Okay. Prior to working on this case, did you know
15 Mr. Annappareddy?

16 A. I did not.

17 Q. Did you know anybody who knew him?

18 A. No.

19 Q. Had you ever heard of him from any person or source?

20 A. No.

21 Q. When were you assigned this case?

22 A. When I was new to the Defense Criminal Investigative
23 Service. Fall of 2012, I received a copy of the *qui tam*, and
24 we opened January 2013.

25 MR. EISER: Beg the Court's indulgence for a second.

1 BY MR. EISER:

2 Q. I'm going to show you what we've marked as Defense
3 Exhibit 18. Can you identify this document?

4 A. Yes. That looks like my case initiation.

5 Q. When you say your "case initiation," what do you mean by
6 that?

7 A. This is a document that we use to open a case that we have
8 received and reviewed the *qui tam* and coordinated with other
9 agencies.

10 Q. Defense Exhibit 18 is in evidence.

11 This is a document that you prepared; is that right?

12 A. That's correct.

13 Q. It's dated January 9th, 2013?

14 A. Yes.

15 Q. And you mentioned that -- well, go ahead and just read the
16 first sentence about the case initiation that's highlighted
17 there.

18 A. Sure.

19 "This investigation is initiated based on a *qui tam*
20 complaint received July 29th, 2012, from the United States
21 Attorney's Office, District of Baltimore, Maryland."

22 Q. And is that unusual, in your experience and your job, for
23 opening an investigation based on the filing of a *qui tam*
24 complaint?

25 A. We're copied on most healthcare fraud *qui tam* complaints

1 in every district, so no, it's not unusual.

2 Q. The question was: Is it unusual to open an investigation
3 as a result of receiving one of those?

4 A. No.

5 Q. Why do you say that? Have you done it before?

6 A. Plenty of times.

7 Q. Okay. Can you read the other highlighted sentence on that
8 first page of your case opening memo.

9 A. "In 2007, Pharmacare had a revenue of 1.7 million. By
10 2010, revenue had increased to 18 million. According to a
11 recent public statement by Annappareddy, revenue for 2012 is
12 expected to be more than 100 million."

13 Q. Where did you get that information?

14 A. This was open source information, I believe.

15 Q. What does that mean, "open source"?

16 A. It was either public information or reported to me. I'm
17 not sure exactly.

18 Q. I'm going to go to Page 2 of Defense Exhibit 18 and ask
19 you to read for us the highlighted section.

20 A. "Since DCIS received notice of the *qui tam* in July 2012,
21 case development and coordination has taken place with the U.S.
22 Attorney's Office civil Assistant United States Attorney
23 Michael DiPietro; the Department of Health and Human Services,
24 Office of Inspector General; the Maryland office of the
25 Attorney General Medicaid Fraud Control Unit; and the Federal

1 Bureau of Investigations.

2 "In August 2012, the Department of Defense TRICARE
3 Management Activity at Aurora, Colorado, reported total
4 exposure as approximately \$200,203.88 for claims.

5 "In September 2012, the relator was interviewed at the
6 U.S. Attorney's Office and provided some corroborating
7 information and agreed to provide additional guidance as the
8 investigation moves forward."

9 Q. Let me stop you there, and ask you: You became involved
10 in the investigation when?

11 A. When I was a brand new employee at DCIS --

12 Q. I just meant the date.

13 A. The date?

14 Q. Yeah.

15 A. I received a copy of the *qui tam* in November of 2012, and
16 opened the case shortly thereafter.

17 Q. So this information here in the last sentence about the
18 relator's interview, how did you -- in September of 2012, how
19 did you know about that?

20 A. I coordinated with Health and Human Services OIG who said
21 we've already conducted the relator interview.

22 Q. Did you see the documentation of it?

23 A. Eventually, yes.

24 Q. Go ahead and read the next highlighted sentence.

25 A. "Based on the information developed to date, and in

1 conjunction with the U.S. Attorney's Office, DCIS will initiate
2 investigation to determine the full extent of the alleged
3 scheme to include the amount of alleged failure to reverse
4 prescriptions never received and the total financial loss to
5 the government."

6 **Q.** Agent Ryan, did you go forward and open your investigation
7 and join this investigative team?

8 **A.** Yes.

9 **Q.** And I'm going to show you what we've marked as
10 Defense Exhibit 95, which is in evidence. I don't want to go
11 through them all. But I do want to ask you about -- well, does
12 Defense Exhibit 95 show the people who were involved in the
13 investigation of Pharmacare?

14 **MR. GREENBERG:** Your Honor, we just reiterate our
15 objection to this document.

16 But, regardless, proceed.

17 **THE COURT:** It's just a list of the team that worked
18 together. You object to that on what grounds?

19 **MR. GREENBERG:** Well --

20 **THE COURT:** It just helps me remember the names. I
21 mean, I don't understand --

22 **MR. GREENBERG:** Okay. I'll withdraw the objection.

23 **THE COURT:** All right.

24 Go ahead.

25 **BY MR. EISER:**

1 Q. Is this the -- does this list the members of the
2 investigative team?

3 A. Yes.

4 Q. I want to ask you about a couple members.

5 Maura Lating, did you know her before getting involved in
6 this investigation?

7 A. No, not prior to this investigation.

8 Q. What was your impression of her as an investigator?

9 A. Seemed like she had a lot of experience in the healthcare
10 fraud investigations. Seemed like she represented the FBI
11 well. And initial contact, I -- she wanted to get involved
12 with this case.

13 Q. Okay. What about did Ms. Lating appear to be reliable and
14 trustworthy?

15 A. Yes.

16 Q. And what about Robert Mosley, what was your impression of
17 him as an investigator?

18 A. Again, agent at the time, I think he had more than
19 10 years' experience. Seemed like he knew the Medicaid Fraud
20 Control Unit well and had worked many investigations.

21 Q. And based on your interactions with him, did he appear to
22 be trustworthy and reliable?

23 A. Yes.

24 Q. What was your role on this team?

25 **MR. GREENBERG:** Objection to the extent that it goes

1 post indictment.

2 THE COURT: I'm sorry, what was the basis again?

3 MR. GREENBERG: Objection to the extent that it calls
4 for an information after July 23rd, 2013.

5 THE COURT: The question was what was his role on this
6 team, wasn't it?

7 MR. EISER: Yes, Your Honor.

8 MR. GREENBERG: But the role evolved, I believe, after
9 July 23rd, 2013.

10 THE COURT: Well, so far, you're talking about
11 preindictment role?

12 MR. EISER: Yes. When he joined the team.

13 THE COURT: All right. Overruled.

14 BY MR. EISER:

15 Q. What was your role when you came on the team?

16 A. I was a new agent following the lead of senior
17 investigators. I assisted on some surveillance and trash
18 pulls. And then I was also responsible for the home -- the
19 search of the home of the Plaintiff.

20 Q. Can you describe what you -- you mentioned that you
21 participated in surveillance. Was that before the search
22 warrant affidavit was filed?

23 A. Yes.

24 Q. Can you describe what you were doing there?

25 A. A part of the *qui tam* was that pharmacy techs were staying

1 late at night and billing for every available refill. We
2 conducted surveillance in Harford County of the Pharmacare
3 location and the CareMerica location. Seeing lights on in the
4 evenings. I'm certain I went into the dumpster at CareMerica
5 with Agent Lating present and recovered some -- some trash.

6 Q. Why did you do that?

7 A. It's a standard investigative technique to see -- because
8 we saw the pharm techs throw something away. And a trash pull
9 is a standard technique that we use on investigations.

10 Q. Do you know what became of what you obtained from that
11 trash pull?

12 A. I recall at least one specific document containing --
13 stating something to the effect of "refills available" in that
14 trash that we recovered.

15 Q. Anything else that you can recall significant from the
16 trash pull?

17 A. No.

18 Q. How about from the surveillance, did that corroborate the
19 information that you had about what was going on at Pharmacare?

20 A. Yes. Some of what the relator said seemed true.

21 Q. Did you participate in any of the interviews of any of the
22 witnesses?

23 A. Pre-search warrant, I don't believe so.

24 Q. Okay. Did you meet with the members of the investigative
25 team to review what was coming in during the course of the

1 investigation?

2 A. I saw copies of reports. And there were case meetings,
3 yes.

4 Q. How frequently, from the time you started in January up to
5 July 23rd, did you meet with the investigative team or some
6 members of it?

7 A. I can't recall.

8 Q. Can you estimate, was it more than once?

9 A. Definitely more than once. But it's -- in that phase, we
10 would meet and discuss additional steps when we were conducting
11 surveillance or -- but a specific meeting with everyone in a
12 meeting room, I'm not exactly sure.

13 Q. Can you tell us what you recall about the process for the
14 drafting and revising of the search warrant affidavit that was
15 filed on July 23rd, 2013?

16 A. I did not have much involvement in the drafting of the
17 search warrant. I reviewed the search warrant. I don't see my
18 input in there.

19 Q. Say that again.

20 A. I've reviewed the search warrant, I don't see any
21 interviews that I conducted, based on the search warrant.

22 Q. Okay. But based on what you learned in the meetings and
23 your reviews of the reports up to July 23rd, 2013, at that
24 time, did you believe there was a reasonable basis to believe
25 that Mr. Annappareddy may have been engaging in healthcare

1 fraud through his company?

2 A. There were a number of witness statements that I reviewed
3 that indicated that there was probable cause for a search
4 warrant.

5 Q. Were you aware at the time the affidavit was submitted of
6 additional evidence or information not included in the
7 affidavit that supported or strengthened that belief that you
8 just described?

9 A. I'm sorry, can you ask that question again.

10 Q. Were you aware at the time the affidavit was submitted of
11 additional evidence or information that was not included in the
12 affidavit that supported your belief that Mr. Annappareddy was
13 engaging in healthcare fraud at that time?

14 A. I can't recall.

15 Q. Okay. You mentioned that you had information that didn't
16 make it into the affidavit; is that right?

17 A. I'm not sure how much of the surveillance information made
18 it into the search warrant.

19 **MR. GREENBERG:** Your Honor, I'm going to have to
20 object to the leading. I think that counsel is feeding him
21 answers at this point.

22 **THE COURT:** Well, it is a leading question. Do you
23 want to rephrase the question. I think it was just summarizing
24 what he already said, but just rephrase the question.

25 **MR. EISER:** I'll withdraw it.

1 **THE COURT:** All right. Withdrawn.

2 **BY MR. EISER:**

3 **Q.** Do you know who were the members of the investigative team
4 that did contribute to and reviewed the drafts of the
5 affidavit?

6 **A.** Definitely Agent Lating, and, I believe, investigators
7 from Medicaid Fraud Control Unit, and the prosecutors on the
8 case.

9 **Q.** During your participation in the investigation and the
10 meetings discussing the affidavit, were any of them -- did any
11 of the members of the investigative team provide any
12 disagreement with the conclusion that you reached that there
13 was probable cause at the time the affidavit was submitted?

14 **A.** No.

15 **Q.** And did you see anything in the course of your
16 investigation up to July 23rd of 2013, that led you to doubt
17 whether there was probable cause?

18 **A.** No.

19 **Q.** Why not?

20 **A.** In this case, we had a chief operating officer, a
21 pharmacist, a pharmacy tech, and a patient --

22 **MR. GREENBERG:** Judge Anderson, just to preserve the
23 record, this line of questions, we've objected to similar lines
24 of questions before about probable cause being a legal issue.
25 You overruled the objections, but just to preserve the issue --

1 **THE COURT:** All right. You have a standing objection
2 to this line of questioning. You're protected on appeal.

3 **MR. GREENBERG:** Thank you, Your Honor.

4 **BY MR. EISER:**

5 **Q.** Do you recall the question?

6 **A.** Yes, I do.

7 Based on the witness statements that I reviewed in the
8 affidavit, no one had cause for concern for a search warrant.

9 **MR. EISER:** Your Honor, could I have a moment?

10 **THE COURT:** Yes, sir.

11 **MR. EISER:** Thank you, Agent Ryan. That's all I have.

12 **THE COURT:** Cross-examination.

13 - - -

14 **CROSS-EXAMINATION**

15 - - -

16 **BY MR. GREENBERG:**

17 **Q.** Good afternoon, Special Agent Ryan. How are you today?

18 **A.** Good, sir. How are you?

19 **Q.** Good.

20 You were based in Baltimore when you were new to the DCIS,
21 right?

22 **A.** That's correct.

23 **Q.** I want to show you one of the documents you were asked
24 about, Government's Exhibit 18.

25 **MR. GREENBERG:** Could we please bring that up.

1 **BY MR. GREENBERG:**

2 **Q.** And it's also in your binder there. Do you remember how
3 Government counsel highlighted portions of this document for
4 you?

5 **A.** Uh-huh.

6 **Q.** I want to ask you about something he didn't highlight
7 and -- so it's on the first page.

8 **MR. GREENBERG:** Can you please highlight the last
9 sentence of the first paragraph.

10 **BY MR. GREENBERG:**

11 **Q.** Special Agent Ryan, you were not asked to read that
12 sentence, were you?

13 **A.** No.

14 **Q.** That was not highlighted during your direct examination,
15 was it?

16 **A.** No.

17 **Q.** And can you please show me where attachment 1 is in
18 Government's Exhibit 18? Just turn to it in your binder, if
19 you can. All right. Let me try to . . .

20 All right. Special Agent Ryan, let me just sort of
21 short-circuit this, maybe. You agree that attachment 1 is not
22 in Government's Exhibit 18?

23 **A.** I don't see it.

24 **Q.** Okay. Thank you.

25 **MR. GREENBERG:** Your Honor, I'm afraid that the next

1 line of questions might take awhile. If we could just take a
2 lunch break, I think that would be best.

3 **THE COURT:** We can do that. We can do that.

4 Let's just say it's 12:15, that will bring us back at
5 1:30.

6 **MR. PHELPS:** Your Honor, if I could be heard for just
7 a minute after the witness is excused.

8 **THE COURT:** Sure. Certainly.

9 Thank you, you're excused.

10 **THE WITNESS:** Thank you, sir.

11 (Witness exits.)

12 **THE COURT:** Ms. Shiff, hold on a minute, I want to ask
13 you something before you leave during the break.

14 All right. Mr. Phelps?

15 **MR. PHELPS:** Yes, Your Honor. So they've said that
16 they're going to call a gentleman by the name of Ernest McCray.

17 Mr. McCray was interviewed by the FBI. His interview
18 report was produced in this case almost completely redacted
19 because it occurred in conjunction with the service of a grand
20 jury subpoena, and it would be very helpful for me to get the
21 clean version from the FBI if Your Honor would lift 6(e) as it
22 relates to Mr. McCray's interview report. I'm trying to figure
23 out if the interview report was produced in the criminal case.
24 I see a version of it, but I just want to be doubly sure that I
25 can disclose information that --

1 (Cross talk.)

2 **THE COURT:** Any objection to lifting the seal?

3 **MR. GREENBERG:** No objection, but I think it's been
4 lifted. I'm fairly certain, but I will confirm at the lunch
5 break. I'm fairly certain that the interview of the 302, I
6 think, by, I believe it was, Lating on the Ernest McCray, I
7 believe that was ultimately produced sometime post the wrongful
8 conviction.

9 However, we would actually like to get the grand jury
10 testimony unsealed. Mr. McCray testified before the grand
11 jury. We have, sort of, that information, but we were only
12 allowed by the Government to review a copy at their offices.
13 We were not given a copy of the grand jury transcript, which
14 includes *Brady* information.

15 **THE COURT:** I don't see him on the witness list of
16 either party. Is he on the list?

17 **MR. GREENBERG:** This is one of the witnesses that's
18 responding to the accusations and allegations in the
19 Government's case.

20 **THE COURT:** All right. Well, do y'all agree that
21 everything can be unsealed or not?

22 **MR. PHELPS:** So, Your Honor, I just want to be careful
23 about everything, because there's a whole lot more to
24 everything. But certainly, everything with respect to
25 Mr. McCray, we have no objection. I have not been able to

1 locate his grand jury transcript. I will look.

2 **THE COURT:** All right. I'll move the lifting on the
3 seal on his grand jury transcript, if available, and the
4 affidavit --

5 **MR. PHELPS:** Interview report.

6 **THE COURT:** -- and the interview report.

7 **MR. GREENBERG:** Given Your Honor's order and these
8 requests, can we please -- respectfully, Your Honor, if you
9 could order the Government to provide a copy of the grand jury
10 transcript, if it's within the possession, custody, or control,
11 by say, this evening.

12 **THE COURT:** This isn't time to be doing discovery in
13 this case. We've been doing this four and a half years.

14 **MR. GREENBERG:** Well, this is something -- there's a
15 lot of discovery issues we could go into, Your Honor, I don't
16 think we should, in the interest of time.

17 This is something that was --

18 **THE COURT:** I just don't want to open up a can of
19 worms --

20 **MR. GREENBERG:** It won't.

21 **THE COURT:** -- allowing discovery of a very sensitive
22 document here in the middle of a trial.

23 **MR. PHELPS:** Your Honor, we object to Mr. McCray being
24 called at all. But if we have -- it sounds like they have it
25 already. I didn't know that. It sounds like they already have

1 it. So it seems like it may be a nonissue.

2 **MR. GREENBERG:** And I should also say that, you know,
3 assuming my memory is correct and that we have that 302, I will
4 happily email it to Mr. Phelps --

5 **THE COURT:** All right. Well, just look at that over
6 lunch.

7 **MR. GREENBERG:** The grand jury, though, the grand jury
8 transcript -- look, if it's going to delay things, we can move
9 past it. But I mean, I just -- it would be nice to have that.

10 **THE COURT:** Government opposes the transcripts being
11 released?

12 **MR. PHELPS:** Not his transcript, no, Your Honor,
13 certainly not. We object to the witness and having to do this,
14 but if we're going to call the witness, we'll get the
15 transcript.

16 **THE COURT:** Assuming the witness will be called,
17 you'll get the transcript of his testimony alone.

18 **MR. PHELPS:** Correct.

19 **THE COURT:** All right. Well, provide that as well.

20 **MR. GREENBERG:** And just so we know -- and I'm not
21 going to hold you to this, but I believe the plan is for
22 Mr. McCray to testify at 9:00 a.m. tomorrow. I mean, is it
23 feasible, even, to find out whether you have access to that.

24 **MR. PHELPS:** I should have clarity by the end of the
25 lunch break.

1 **MR. GREENBERG:** Thank you.

2 **THE COURT:** All right. But before we leave, the other
3 part of this case, the civil jury trial against Pam Arnold that
4 I was unsuccessful in trying to merge into this trial, my
5 question is: Will it be a virtual identical rerun of what
6 we're hearing in this case? Will it be longer? Will it be
7 shorter? I know with a jury, it slows things down in terms of
8 selecting a jury, running the jury in and out of the courtroom,
9 you know, burns up more time.

10 But apart from all of that, will the cast of characters be
11 basically the same? I'm just curious. That's why I asked
12 Ms. Shiff to stay.

13 **MR. GREENBERG:** Your Honor, I believe the cast of
14 characters will be basically the same. I mean, I think it's
15 fair to say that the examination of Defendant Arnold will be
16 substantially longer. And that because it's a jury trial --
17 because it's a jury trial -- and this is why we oppose the
18 motion to bifurcate, because it's a jury trial, unfortunately,
19 I'm afraid that Your Honor is going to have to sit through not
20 only the same testimony, but expanded versions of it to educate
21 the jury, which unlike Your Honor, doesn't have prior
22 familiarity with the case.

23 So, you know, it's going to be significantly longer, which
24 is why we wanted one trial. But . . .

25 **THE COURT:** Ms. Shiff, do you want to weigh in on what

1 you think might happen?

2 **MS. SHIFF:** I would have thought the opposite, Your
3 Honor. I think, Your Honor, there is need for more background
4 information; however, I do think that a lot of the testimony in
5 this trial with regard to the losses, the in-and-out analysis
6 and the losses won't be necessary in the case against
7 Ms. Arnold.

8 However, the Plaintiff is the one with the burden of
9 proof. My client is a defendant. So if he -- if the Plaintiff
10 intends to put on those witnesses, we would have to address
11 them at the time of trial. It sounds to me as though the
12 Plaintiff does intend to present those witnesses.

13 I would hope much of this would be short-circuited as to
14 what Ms. Arnold's role was. That would be my hope.

15 **MR. GREENBERG:** Can I just briefly respond, Your
16 Honor.

17 I think, probably, there's three points. First, at a jury
18 trial, we will present significantly more witnesses for a
19 variety of reasons.

20 Second, Defendant Arnold has not had an opportunity to
21 have her counsel cross-examine or examine any witness in this
22 case. I don't see how the testimony can be used against her.

23 But third, and this is really the most important point, it
24 would unfairly prejudice Mr. Annappareddy to have dry
25 transcripts for them to give to the jury and have them read

1 transcripts other than hearing live witnesses. That would just
2 be fundamentally unfair, and -- I'll leave it at that.

3 **THE COURT:** I didn't hear her propose to read a dry --
4 introduce a --

5 Is that what you said?

6 **MS. SHIFF:** Not at all Your Honor. I just thought
7 that, because of Ms. Arnold's role in the case, that some
8 witnesses wouldn't be necessary, but --

9 **THE COURT:** But you don't want to introduce a
10 transcript for the jury to read.

11 **THE WITNESS:** Absolutely not.

12 **THE COURT:** All right. Mr. Greenberg, you don't need
13 to worry about that.

14 **MR. GREENBERG:** Okay. I misunderstood. I apologize.
15 I thought she was suggesting that --

16 (Cross talk.)

17 **MS. SHIFF:** Not at all.

18 **MR. GREENBERG:** But nevertheless, I think we have a
19 fundamental disagreement on the scope of Pam Arnold's role in
20 this case. But we don't need to get into that now. But,
21 suffice to say, that I would say all or virtually all of the
22 same testimony is going to have to be repeated.

23 **THE COURT:** All right.

24 Next question, and we'll break for lunch.

25 Is there any merit to the idea of -- we're going to jump

1 on this case as soon as we get back to South Carolina and get
2 an order out as quick as we can. Don't know which way we're
3 going to go, but we'll go one way or the other. There will
4 probably be an appeal no matter what happens.

5 Is there any merit to waiting on that appeal to play out
6 in the Fourth Circuit so we can get definitive rulings on some
7 issues that might be common to both cases?

8 **MR. GREENBERG:** Your Honor, respectfully, we would
9 object to that. The claims against Pam Arnold are different,
10 both in their scope, as Your Honor's order makes clear, and in
11 the elements of the most important claims, meaning the biggest
12 damages claims.

13 Mr. Annappareddy has already been waiting almost
14 10 years --

15 **THE COURT:** I don't understand why the claims will be
16 different. You've got to convince me of that.

17 **MR. GREENBERG:** Okay. Well, couple -- I mean, there's
18 a bunch of differences. But, I mean, one that's, I think, the
19 most important difference is that there's no malice element of
20 the claims against Pam Arnold, at least for the Fourth
21 Amendment malicious prosecution claims and the pure Fourth
22 Amendment claims. That's a big difference.

23 Two, there's claims that are post indictment, I believe,
24 against Defendant Arnold, if I remember correctly, because she
25 didn't move for summary judgment on certain things.

1 Three, there's an intentional infliction of emotional
2 distress claims against Defendant Arnold.

3 **THE COURT:** I know the additional claims. But I'm
4 just saying are there any issues that are important in that
5 case that will be decided by the Fourth Circuit Appeal in this
6 case? We can talk about it later. Let's just talk about this
7 later.

8 **MR. GREENBERG:** Yes, Your Honor.

9 **MS. SHIFF:** Your Honor, just for the record, our
10 position would be the opposite. I think it would be in the
11 interest of judicial economy to have an appeal proceed because,
12 to the extent that there are many duplicate claims, we bring a
13 jury in, have a jury trial, and the appeal is pending.
14 Depending on what the Fourth Circuit does, we could have to
15 redo the jury trial, and no one wants that.

16 **THE COURT:** Well, just give some thought to that. I'm
17 not deciding anything on that today. I just want to bring it
18 up.

19 **MR. GREENBERG:** I just want to briefly respond to
20 that.

21 So Mr. Annappareddy has been waiting almost 10 years for
22 justice. If we go up to the Fourth Circuit again, there could
23 be a two-year delay. That would not serve the interest --

24 **THE COURT:** There won't be a two year -- the
25 transcript in this case will be ready when the case closes.

1 Usually, you have to wait four or five months for a transcript.
2 Y'all won't have that problem. Unless you all ask for extended
3 briefing, which, in this case, throughout its history, both
4 sides have wanted copious briefing time, unless you ask for
5 that, we should get an answer back within a year or less.

6 **MR. GREENBERG:** Well, Your Honor, just based on what
7 the Fourth Circuit has been doing recently, respectfully, I
8 think it would be at least a year. But any delay of more than
9 a few months, I think would be unfair at this point. I mean,
10 there's no --

11 **THE COURT:** I know memories are fading; I understand
12 that point. We're already at 10 years, 12 years will be even
13 worse; I understand that.

14 **MR. GREENBERG:** Yes. And also, Mr. Annappareddy would
15 have to wait even longer, and the Government has already
16 complained about, you know, it can't respond to allegations
17 because they're from so long ago, and then we're going to --
18 they're going to -- that argument's going to be on steroids if
19 we have any more delay.

20 **THE COURT:** All right. Let's break for lunch. It's
21 12:30. Let's come back at 1:45.

22 **THE CLERK:** All rise. This Honorable Court is now in
23 recess.

24 (Whereupon, a recess was taken from 12:28 p.m. to
25 1:47 p.m.)

1 **THE CLERK:** All rise. This Honorable Court resumes in
2 session.

3 **THE COURT:** Had we finished with Mr. Ryan when we
4 broke for lunch?

5 **MR. GREENBERG:** No, Judge Anderson. We had a little
6 more.

7 **THE COURT:** All right. Please bring the witness back.
8 (Witness enters.)

9 **THE COURT:** You're still under oath, Mr. Ryan.

10 **BY MR. GREENBERG:**

11 **Q.** Good afternoon, Special Agent Ryan.

12 **A.** Good afternoon, sir.

13 **Q.** I believe you testified on direct that you were involved
14 in surveillance activities, right?

15 **A.** Yes.

16 **Q.** And you also testified that you were involved in trash
17 runs?

18 **A.** Yes.

19 **Q.** And you testified that you were involved in those
20 activities at Plumtree and CareMerica?

21 **A.** Yes.

22 **Q.** And I believe you testified that what you saw, Special
23 Agent Ryan, was billing activity there late at night?

24 **A.** I saw employees working in CareMerica past hours.

25 **Q.** But not late at night?

1 A. Late at night, in the evenings. It was dark.

2 Q. Was it after 10:00 p.m.?

3 A. No.

4 Q. Was not after 10:00 p.m., was it?

5 A. It was not after 10:00 p.m.

6 Q. It wasn't after 9:00 p.m., was it?

7 A. I don't believe so.

8 Q. It wasn't after 8:00 p.m., was it?

9 A. It could have been around 8:00 p.m.

10 Q. When there were surveillance activities done for the
11 Pharmacare investigation, there were memos written about those
12 activities, right?

13 A. Yes.

14 Q. And when there were trash runs done, there were memos
15 written on those as well.

16 A. I can't recall.

17 Q. Okay. I'm going to show you a document either now or
18 shortly that will refresh your recollection.

19 Give me one second.

20 MR. GREENBERG: All right. This'll be
21 Plaintiff's 153, initially for identification.

22 BY MR. GREENBERG:

23 Q. Special Agent Ryan, let's see if, first, we can refresh
24 your recollection.

25 And do you see how this is a memo dated February 5th,

1 2013?

2 A. Yes.

3 Q. And it's by Laurie Gutberlet?

4 A. Yes.

5 Q. To the Pharmacare file?

6 A. Yes.

7 Q. And the subject is "Report of Surveillance
8 Activities/Pharmacare and CareMerica Pharmacies."

9 A. Yep.

10 Q. But if you look, later in the document, it wasn't actually
11 the -- the Pharmacare pharmacy meant the Plumtree pharmacy,
12 right?

13 A. The --

14 Q. Well, if you look on Page 2, you see on the very first
15 entry, it says "208 Plumtree Road," right?

16 A. Yes. Plumtree was called Pharmacare, as best as I can
17 remember.

18 Q. Okay. So your understanding and what the team understood
19 by Pharmacare in the subject of this memo was Plumtree?

20 MR. EISER: Objection to what the team understood.

21 THE COURT: Well, if he knows.

22 Do you know what the team understood?

23 THE WITNESS: Plumtree was Pharmacare. And just down
24 the road, I believe it was Old Emmorton, was CareMerica.

25 THE COURT: All right.

1 Overruled.

2 **BY MR. GREENBERG:**

3 **Q.** And you knew that CareMerica was a new pharmacy at the
4 time, closed-door specialty pharmacy, right?

5 **A.** I knew it was a closed-door pharmacy.

6 **Q.** And you knew it was new?

7 **A.** I can't recall on the age of the place.

8 **Q.** Okay. Well, you knew that it opened within the past month
9 when this was going on?

10 **A.** Not at the time, no.

11 **Q.** You learned that later, yes?

12 **A.** I can't recall when specifically it was opened, new, not
13 new.

14 **Q.** Okay. Does this document refresh your recollection on
15 whether -- well, actually, let me sort of move to a different
16 part of it.

17 Do you see how -- and we're going to go through this
18 document, but before we do that, I just want to show you, if
19 you turn to Appendix, I guess, 1, this is "Inventory of Trash
20 Bag Contents."

21 Do you see that on your screen or on your -- does this
22 refresh your recollection that either -- let me ask it
23 differently.

24 Do you agree now that during the Pharmacare investigation,
25 when there was a trash run done, there would be either a memo

1 or a written inventory prepared on the trash run?

2 A. Yes.

3 Q. Okay. And let's just kind of go through this trash --
4 we'll come back to the inventory, actually.

5 Let's just kind of go through this memo.

6 You see under "Investigative Activity" on the first page?

7 A. Yes.

8 Q. It's talking about Wednesday, January 30th, 2013, and
9 Thursday, January 31st, 2013?

10 A. Yes.

11 Q. And there were what are referred to as "surveillance
12 activities" on those dates?

13 A. Yes.

14 Q. And the investigators who were involved were you, Special
15 Agent Ryan, Laurie Gutberlet, Pam Arnold, as well as Maura
16 Lating and Robert Mosley, right?

17 A. Right.

18 Q. And then the last sentence on the first page, if we can
19 highlight it, it says, "Below is a chronology of events that
20 occurred during the surveillance activity." Right?

21 A. Right.

22 Q. Let's go to the very first entry at Page 2. This is
23 8:58 a.m.

24 Do you see that?

25 A. Yes.

1 Q. "Plumtree," that's the Plumtree store?

2 A. Yes.

3 Q. And you see how it says, "Employee Lisa Ridolfi arrives at
4 208 Plumtree Road," operating a certain car. And then she
5 opens the pharmacy at 9:00 a.m. Right?

6 A. Yes.

7 Q. So based on what was surveyed, Ms. Ridolfi was by herself
8 at that time.

9 A. That's what's reported.

10 Q. And it goes on to say that subsequently arriving for work,
11 or also arriving for work is Purnell Watkins.

12 Do you see that?

13 A. Yes.

14 Q. And he's a delivery driver, right?

15 A. I'm not sure.

16 Q. Name doesn't ring a bell?

17 A. No.

18 Q. Not someone you interviewed?

19 A. No.

20 Q. You mean "yes," correct?

21 A. Correct. Not someone I interviewed.

22 Q. Let's go down to the next entry.

23 You see how it says "3:30 p.m. Arnold and Gutberlet, 1504
24 Park Hill Court"?

25 A. Yes.

1 Q. And then it says, "This location is Annappareddy's
2 residence"?

3 A. Yes.

4 Q. Then in the middle of the paragraph, it says, "Also
5 observed in the driveway is Annappareddy's 2006 black Bentley;
6 this vehicle bears Maryland vanity tag Sravya"?

7 A. Yes.

8 Q. You knew that was the name of Mr. Annappareddy's daughter,
9 right?

10 A. I did not.

11 Q. At no time during the investigation you knew that?

12 A. I --

13 Q. All right. It doesn't matter. We can move on.

14 Let's go to the next page -- actually, it's Page 4. And
15 do you see on the bottom of Page 4, there's a picture of the
16 Plumtree store?

17 A. Yes.

18 Q. Do you recognize that as a true and accurate depiction of
19 the Plumtree store that you surveyed in early -- in
20 January 2013?

21 A. Yes.

22 **MR. GREENBERG:** Court's indulgence.

23 Can we zoom in on that photo of the Plumtree store,
24 please, so we can see the people middle in the door, in the
25 photo on the door. All right, yeah. Let's move on from this.

1 It's not visible.

2 **BY MR. GREENBERG:**

3 **Q.** So let's just kind of keep trying to go in chronological
4 order. Let me back up.

5 So we've talked about the so-called vanity plate that
6 we're seeing at Mr. Annappareddy's home, right?

7 **A.** Yes.

8 **Q.** And then the next event appears on Page 4, it looks like,
9 other than some photographs, "5:00 p.m. Arnold and Gutberlet,
10 208 Plumtree Road," right?

11 **A.** Yes.

12 **Q.** And that's, again, the Plumtree store?

13 **A.** Yes.

14 **Q.** And surveillance was conducted there by Arnold and
15 Gutberlet?

16 **A.** Yes.

17 **Q.** Employees locked the doors 5:35 p.m.?

18 **A.** That's what the report says.

19 **Q.** And then there's the photo that we talked about that you
20 identified as true and accurate?

21 **A.** Yes.

22 **Q.** Okay. Let me . . .

23 (Counsel conferring.)

24 **MR. GREENBERG:** Court's indulgence.

25

1 **BY MR. GREENBERG:**

2 **Q.** Special Agent Ryan, after joining the Pharmacare
3 investigation, you reviewed memos by Laurie Gutberlet, right?

4 **A.** I did.

5 **Q.** And other materials she prepared for the case?

6 **A.** Yes.

7 **MR. GREENBERG:** My apologies, Your Honor.

8 My apologies, Your Honor. It's a mix up. My fault on
9 that.

10 **BY MR. GREENBERG:**

11 **Q.** Let's go back to the document we've been discussing.

12 We're talking about the surveillance that was -- the next
13 entry was 5:00 p.m. at the Plumtree store, Arnold and
14 Gutberlet. And we had talked with that photo of the Plumtree
15 store, right?

16 **A.** Yes.

17 **Q.** Let's turn to the next page.

18 So the next entry is also says 5:00 p.m., the exact same
19 time, right?

20 **A.** Yes.

21 **Q.** And it says that you and two other people were at
22 CareMerica, that address?

23 **A.** Yes.

24 **Q.** And that's the specialty pharmacy we talked about?

25 **A.** Yes.

1 Q. And do you see how the other two people are Maura Lating
2 and Robert Mosley?

3 A. Yes.

4 Q. And it says in this -- for this entry, commencing at
5 5:00 p.m. surveillance is conducted at the CareMerica pharmacy,
6 has the address, identifies Lating, yourself, and Mosley.

7 Do you see that?

8 A. Yes.

9 Q. And then it says, "Photograph of this location is provided
10 as figure 5 below."

11 Do you see that?

12 A. Yes.

13 Q. And do you see the photo below it?

14 A. Yes.

15 Q. And how that depicts the -- the new closed-door
16 specialty pharmacy at CareMerica?

17 A. Yes.

18 Q. All right. Back to the text above.

19 It says, "Lights are on in the pharmacy and a 2013 gold
20 Acura crossover-type vehicle" bearing a certain tag is parked
21 next to your vehicle van, right?

22 A. Yes.

23 Q. And then it goes on to say that tag is listed to someone
24 named Deepa Menon?

25 A. Yes.

1 Q. M-E-N-O-N, right?

2 A. Yes.

3 Q. No one ever alleged that that's a woman, right?

4 A. I learned that that was a woman throughout the
5 investigation, I'm not sure exactly when.

6 Q. But you learned it before July 20 -- doesn't matter.

7 You agree that no one ever alleged that Ms. Menon was part
8 of the fraud.

9 A. Not to my knowledge.

10 Q. Okay. And Deepa Menon -- D-E-E-P-A, capital M-E-N-O-N,
11 two different words, just leave out her middle name for
12 convenience -- she was the pharmacist at CareMerica, right?

13 A. Yes.

14 Q. And that meant she was in charge of what happened there?

15 A. Yes.

16 Q. Okay. Now, the next entry here -- by the way, this is the
17 surveillance activity you're referring to on direct, the type?

18 A. Yes, it is.

19 Q. Okay. And if we go down, you see how it's 6:15 p.m.?

20 A. Yes.

21 Q. 208 Plumtree Road, it's the Plumtree store?

22 A. Yes.

23 Q. You see three lines down, let's highlight that sentence
24 and the next one. "At 6:20 p.m. Ridolfi, Vipin, Konda and the
25 part-time Harford County sheriff leave the building."

1 Do you see that?

2 A. Yes.

3 Q. So there's a part-time law enforcement officer working at
4 that location, right?

5 A. Yes.

6 Q. And you knew that as of, at least, January 2013?

7 A. Yes.

8 Q. And so after those folks left the building, it says,
9 quote, "Ridolfi locks the facility," end quote, right?

10 A. Yes.

11 Q. There's some period of time there where Ridolfi was by
12 herself it appears, right?

13 A. I can't infer that from what's stated in the report.

14 Q. All right. Well, in any event, Ridolfi was the one who
15 locked the facility.

16 A. Yes.

17 Q. And that's after the other folks left.

18 A. Is that a question?

19 Q. Yes.

20 The answer's "yes," right?

21 A. Yes.

22 Q. All right. Let's go to the next page.

23 All right. Let's look at the entry for -- on top of
24 Page 6. Or, I guess, it's the continuation of the entry for
25 Plumtree that we were just talking about.

1 It says, "Vipin and Konda exit the building with Vipin
2 carrying approximately four bags of trash." Right?

3 A. Yes.

4 Q. And then it goes on to say that Arnold and Gutberlet
5 followed Vipin in the vehicle, right?

6 A. Correct.

7 Q. Then it says, quote, "The first stop Vipin makes is to the
8 parking lot of the CareMerica pharmacy," and it goes on, right?

9 A. Yes.

10 Q. Then it says -- so by the way, just to be clear, the trash
11 that you recovered and inventoried -- or the trash that was
12 recovered and inventoried by you, found that the CareMerica
13 pharmacy dumpster was from Plumtree. We now know that, yes?

14 A. Yes. And according to the report --

15 Q. All right. And it says, "Vipin drives to the commercial
16 dumpster located in the lower tier of the office complex
17 property."

18 Do you see that?

19 A. Yes.

20 Q. And it says, "He exits his vehicle and removes the plastic
21 bags and places them in the dumpster"?

22 A. Yes.

23 Q. And you knew at the time the reason Vipin Patel took trash
24 from Plumtree to CareMerica is because the commercial dumpster
25 at CareMerica had free access at the time, but the one -- there

1 was no such access at the Plumtree location, right?

2 A. I'm not aware of what he had access to at the time or why
3 he was driving.

4 Q. Okay. You witnessed -- you and Investigators Arnold and
5 Gutberlet witnessed Vipin Patel putting all four trash bags,
6 right, in this dumpster, right?

7 A. Yes.

8 Q. Commercial -- commercial dumpster.

9 And then Vipin drives away without any trash, right?

10 A. Yes.

11 Q. And he's followed to a dry cleaners.

12 A. Yes.

13 Q. And that's located in Abingdon?

14 A. Yes.

15 Q. And he was following by, looks like, at least four people:
16 Lating, Mosley, Gutberlet and Arnold, right?

17 A. Right.

18 Q. And then, I guess, it looks like, at least at this point,
19 Mr. Konda is with Vipin in the vehicle? Next sentence.

20 A. Yes.

21 Q. Okay. And this is -- so basically, the next couple of
22 events involving 6:34 p.m., 6:37 p.m., those involve Vipin
23 picking up dry cleaning, placing them in the back of the
24 vehicle, and driving them to back CareMerica, right?

25 A. Correct.

1 Q. And then he parked in front of CareMerica and he and Konda
2 went into the pharmacy with the dry cleaning?

3 A. Correct.

4 Q. All right. And then it goes down the next entry,
5 7:35 p.m.

6 Do you see that?

7 A. Yes.

8 Q. Also CareMerica?

9 A. Yes.

10 Q. Mosley, Lating, and you were there?

11 A. Yes.

12 Q. It says, "Mosley observes a black Nissan Versa" -- gives a
13 license plate -- "parked in front of CareMerica." Right?

14 A. Right.

15 Q. And the single occupant described as an older Middle
16 Eastern male, approximately 50 years of age, exits the vehicle
17 and enters the pharmacy, right?

18 A. Right.

19 Q. And you believe that to be a true statement?

20 A. If it's in the report, I believe it to be true.

21 Q. All right. So the next entry after that is also for
22 CareMerica, right, 7:55 p.m.?

23 A. Yes.

24 Q. And it says, again, same three people, you, Lating, and
25 Mosley were there, right?

1 A. Yes.

2 Q. And now it says four individuals exit the pharmacy, right?

3 A. Yes.

4 Q. So before, we've got two people; we've got Vipin Patel,
5 Hanuma Konda, and this Middle Eastern male approximately
6 50 years of age, right?

7 A. Correct.

8 Q. But now there's a fourth person. Do you see how it's
9 referred to as a female in that?

10 A. Uh-huh.

11 Q. And it doesn't say that the female was Middle Eastern,
12 right?

13 A. Right.

14 Q. Okay. And the female was observed locking the business
15 and then entering the Acura and driving away, right?

16 A. Right.

17 Q. Then it goes on to say that Mosley follows one vehicle,
18 Lating followed another vehicle.

19 Do you see that?

20 A. Yes.

21 Q. And -- trying to cut through some of this stuff. Let's go
22 to the next page. Actually, I guess it starts at the very end
23 of the previous page.

24 Basically, you and -- "We locate the Nissan in transit
25 being followed by Mosley and assist in the mobile

1 surveillance."

2 Do you see that?

3 A. Yes, I see it.

4 Q. And then on -- long story short, it turns out this older
5 Middle Eastern male, approximately 50 years of age, is Ram
6 Guruvareddy?

7 A. I don't know if we knew that at the time.

8 Q. Okay. But that's who it identified here, right?

9 A. It's identified in the report, yes.

10 Q. Yeah.

11 And then above that, after it talks about the Nissan
12 getting to Mr. Annappareddy's residence, it says, "The males
13 are observed exiting the vehicle and carrying in a large amount
14 of dry cleaning to the house." Right?

15 A. Yes.

16 Q. And then it kind of goes on, right?

17 A. Yes.

18 Q. And then it refers to someone named Harsha in the next
19 paragraph?

20 A. Yes.

21 Q. Just briefly, we don't need to dwell on it. All right.

22 And then it says, "As for the Nissan Versa bearing
23 Maryland tag RXCARE5" -- that's the car that Vipin was driving,
24 right?

25 A. Yes.

1 Q. " . . . then-Special Agent Maura Lating of the FBI
2 followed that vehicle with its two occupants to Eloise Lane."
3 Right?

4 A. Yes.

5 Q. And it says, "Vipin drops off the passenger, Konda" -- at
6 a residence bearing a house number?

7 A. Yes.

8 Q. And "Vipin enters the residence briefly and returns to the
9 Nissan"?

10 A. Correct.

11 Q. That paragraph doesn't mention any trash, right?

12 A. Correct.

13 Q. Okay. And there's a photo of the 1862 Eloise Lane below
14 it?

15 A. Yes.

16 Q. Okay. And then -- I just want to get through the rest of
17 this and then go to the inventory briefly.

18 On Page 8 it says, "Lating followed Vipin from the Eloise
19 Lane location."

20 Do you see that?

21 A. Yes.

22 Q. And then there's a picture of what, I guess, is 1410
23 Harford Square Drive, where apparently Vipin lived?

24 A. Yes.

25 Q. And the next event is 8:20 p.m. at CareMerica, 2227 Old

1 Emmorton Road?

2 A. Yes.

3 Q. And that refers to Mosley and you, Special Agent Ryan,
4 going through the dumpster to retrieve the bags of trash that
5 were placed there by Vipin?

6 A. Yes.

7 Q. And that property was initially retained by Mosley on
8 January 30th, 2013, then turned over to Arnold and Gutberlet?

9 A. Yes.

10 Q. Okay. And the inventory is Appendix I that we looked at
11 briefly earlier?

12 A. Yes.

13 Q. All right. Let's look at the next event. And it looks
14 like that might be the last event for that day. 8:30 p.m. at
15 the Plumtree store, right?

16 A. Yes.

17 Q. "Arnold and Gutberlet."

18 Do you see that?

19 A. Yes.

20 Q. So those two -- so they make a final check of the
21 Pharmacare pharmacy; meaning Plumtree, right?

22 A. Yes.

23 Q. " . . . to ensure no after-hours activity has commenced."
24 Do you see that?

25 A. Yes.

1 Q. And the parking lot is vacant.

2 A. Yep.

3 Q. Okay. The parking lot is vacant with the exception of two
4 vehicles, right?

5 A. Right.

6 Q. And the Honda belongs to Vipin. And the Pontiac --
7 there's a Pontiac that's registered to someone named
8 Douglas Jenkins, Sr.?

9 A. Yes.

10 Q. Okay. And the vehicles remain there?

11 A. Yes.

12 Q. No one ever alleged that Douglas Jenkins, Sr., was
13 involved in any fraud, right?

14 A. I'm not familiar with who Douglas Jenkins, Sr., is.

15 Q. Okay. And there's no mention in this final check, at
16 8:30 p.m., at Plumtree, there's no mention of any lights on,
17 right?

18 A. Correct.

19 Q. No mention of any after-hours activity actually happening,
20 right?

21 A. Correct.

22 Q. Let's go to the next page, Page 9. This is the next day,
23 January 31st, 2013.

24 Do you see that?

25 A. Yes.

1 Q. It starts off with an entry at Washington Boulevard;
2 that's a different location, right?

3 A. Yes.

4 Q. Let's just skip past that one.

5 And then it goes to McDonald's -- or it talks about a team
6 meeting?

7 A. Yes.

8 Q. And then surveillance commences at 5:00 p.m. at the
9 Plumtree and CareMerica locations, right?

10 A. Yes.

11 Q. All right. So the first entry says at 5:00 o'clock p.m.
12 for Plumtree, "The pharmacy is closed to business at 5:30 p.m."
13 Right?

14 A. Yes.

15 Q. And it says, "Several employees are observed leaving for
16 the day," and identifies several, including, again, a Harford
17 County sheriff, right?

18 A. Yes.

19 Q. It does not say that Lisa Ridolfi is observed leaving for
20 the day, right?

21 A. Correct.

22 Q. Let's go to the next entry. This is now back at the
23 CareMerica location, four minutes later, different people doing
24 the surveillance, right?

25 A. Yes.

1 Q. And one of them is Maura Lating?

2 A. Yes.

3 Q. And it says, "Surveillance of the CareMerica location
4 found no lights on and shades down at the pharmacy," right?

5 A. Yes.

6 Q. "The Acura owned by Menon" -- that's Deepa Menon we talked
7 about earlier?

8 A. Yes.

9 Q. "The Acura owned by Menon was parked in the lot." Right?

10 A. Yes.

11 Q. And then the next entry is one minute later at Plumtree,
12 right?

13 A. Correct.

14 Q. And it talks about UPS truck arriving and some other
15 stuff, somebody named Sam Weiner and a black female exits the
16 vehicle, do you see that, enters the pharmacy?

17 A. Yes.

18 Q. And you don't know who that black female was, do you?

19 A. No.

20 Q. Let's go to the next page. 5:30 p.m., Plumtree. Now it's
21 you, Special Agent Ryan, and Gutberlet and Arnold, right?

22 A. Yes.

23 Q. Back at the Plumtree store?

24 Do you see that?

25 A. Yes.

1 Q. Pharmacy closes at approximately 5:35 p.m.?

2 A. Yes.

3 Q. And here, again, there's no mention of seeing Lisa Ridolfi
4 leave the pharmacy, right?

5 A. Correct.

6 Q. All right. 5:46 p.m. is the next entry, also at Plumtree,
7 right?

8 A. Correct.

9 Q. And it talks about Vipin exiting at 5:46 p.m. with Hanamu
10 Konda, or Mr. Konda, K-O-N-D-A?

11 A. Yes.

12 Q. And Vipin, looks like he goes to his personal vehicle, a
13 gold Honda Accord?

14 A. Yes.

15 Q. So we know now that Vipin drove a company car when he was
16 doing work, and he drove a gold Honda Accord for personal
17 stuff, right? That's what this indicates?

18 A. (No response.)

19 Q. We can move on.

20 So then Vipin -- it kind of says more about Vipin. He's
21 driving away from Plumtree, right?

22 A. "Eastbound on Plumtree" --

23 Q. And he goes to CareMerica?

24 A. Yes.

25 Q. Okay. And then the next event that's recorded is at

1 6:00 p.m., right?

2 A. Yes.

3 Q. And that's at the CareMerica location, 2227 Old Emmorton
4 Road?

5 A. Yes.

6 Q. And you were there, Special Agent Ryan?

7 A. Yes.

8 Q. Among others?

9 A. Yes.

10 Q. And Lating and Mosley were there, too?

11 A. Yes.

12 Q. So was Pam Arnold?

13 A. Yes.

14 Q. It says, "Surveillance teams all took up positions nearby
15 within eyeshot of the parking lot of the CareMerica location."
16 Right?

17 A. Right.

18 Q. And "Vipin and Konda are observed exiting the Nissan and
19 entering CareMerica." Right?

20 A. Right.

21 Q. "Menon's vehicle" -- these Deepa Menon, the pharmacist,
22 right?

23 A. Yes.

24 Q. Already on-site, right?

25 A. Yes.

1 Q. Doesn't say anything about her leaving, right?

2 A. Not in this entry.

3 Q. Okay. And the next sentence says, "Konda is visible
4 through the glass door; the interior is illuminated well" --
5 illuminated well, right?

6 A. Yes.

7 Q. " . . . Konda remains in the front area for some time."
8 Right?

9 A. Yes.

10 Q. "He is the only person visible through the door's glass."
11 Right?

12 A. Yes.

13 Q. And then the next entry is at the same location, an hour
14 and 15 minutes later, right?

15 A. Yes.

16 Q. And it's Lating, Arnold, and Gutberlet, right?

17 A. Yes.

18 Q. And now it talks about folks exiting the pharmacy and
19 Vipin driving to his residence?

20 A. Yes.

21 Q. And next entry is 7:45 p.m.

22 Do you see that?

23 A. Yes.

24 Q. That's before 8:00 o'clock, obviously. And the location
25 is CareMerica again, 2227 Old Emmorton Road?

1 A. Yes.

2 Q. So if we go back to the previous entry, you see that it
3 indicates that Deepa Menon, the pharmacist at CareMerica, left
4 at the same time as Vipin and Hanuma Konda, right?

5 A. Yes.

6 Q. The 7:45 p.m. entry, which carries over to the next page,
7 it says, "A brief meeting is convened with surveillance
8 participants." Right?

9 A. Yes.

10 Q. And it says trash recovered by you, from January 30th,
11 2013, the day before, is transferred to Arnold for inventory
12 and retention purposes, right?

13 A. Yes.

14 Q. I'm going to just go to the next entry. It says "8:00.
15 208" -- that's the Plumtree store again?

16 A. Yes.

17 Q. "A final check of 208 Plumtree Road is made to ensure no
18 employees have entered the pharmacy for any after-hour
19 activity." Right?

20 A. Correct.

21 Q. "There's only one car present, it is the gold Honda owned
22 by Vipin." Right?

23 A. Right.

24 Q. And then it says, "It appears Vipin leaves his personal
25 car parked in the lot overnight, and he operates the black

1 Nissan, RXCARE5, on a regular basis." Right?

2 A. Yes.

3 Q. There's no mention of any after-hour activity at Plumtree,
4 though, right?

5 A. Correct.

6 Q. All right. Let's just go through Appendix I, the
7 inventory, quickly.

8 I don't want to go through everything, in the interest of
9 time. But do you see there's -- and I believe the -- the first
10 category is "Shipping Boxes and Labels," right?

11 A. Correct.

12 Q. We agree that that's not any evidence of fraud, right?

13 A. (No response.)

14 Q. We don't need to -- we'll just go on.

15 Next category is "Medicine Bottles," right?

16 Do you see that?

17 A. Yes.

18 Q. Twenty-two empty prescription bottles, right?

19 A. Yes.

20 Q. And none of those medications was considered MEDIC 1495,
21 right?

22 MR. EISER: Objection.

23 THE WITNESS: I can't recall.

24 BY MR. GREENBERG:

25 Q. All right. Let's go down to the next one, "Reports," on

1 the next page. Delivery batch reports for certain days for
2 certain people. And you don't know if those are patients or
3 drivers, right?

4 A. At the time of trash recovery, we did not know its
5 significance.

6 Q. But the answer to the question is -- the question is: You
7 didn't know, before the July 23rd, 2013, whether these people
8 were patients or drivers, right?

9 A. I'm not sure. I don't know. I don't know whether they're
10 patients or drivers.

11 Q. Okay. We can go on.

12 The next page has more of these. "Documents" is
13 miscellaneous documents, right?

14 Do you see that?

15 A. (No response.)

16 Q. These are what they say they are, they're miscellaneous
17 documents, right? I don't want to go through them all.

18 But, I mean, there's nothing here in this list that,
19 sitting here today, you would say suggests any -- well, let me
20 just ask you this.

21 Actually, you know what, I don't even know if we need to
22 go through all this.

23 I mean, you agree those are miscellaneous documents,
24 right?

25 A. Yes.

1 Q. All right. And then the next page has prescription labels
2 for some people, right?

3 A. (No response.)

4 Q. And actually, those are probably -- I don't know actually.
5 We don't know. And it doesn't say whether or not those are
6 pharmacy customers, right?

7 A. (no response.)

8 Q. Correct?

9 A. I looked at a lot of Pharmacare --

10 Q. Question, Special Agent Ryan, is it doesn't say whether or
11 not these are Pharmacare customers, right?

12 A. On the report, no, it does not say --

13 Q. And it doesn't say that any of these people, whether
14 Pharmacare or not, had any prescription billed for that wasn't
15 received by them, right?

16 A. It doesn't say that on this report.

17 Q. And the next page goes on to talk about some AmeriSource
18 Bergen documents -- oh, by the way, I should have clarified on
19 the last page with the prescription labels, the -- you were
20 familiar at the time of the Pharmacare investigation of the
21 extra label function in the software Pharmacare used, right?

22 A. At the time of this report --

23 Q. At the time of the investigation in 2013. Not necessarily
24 in January, because you just started, but several months later,
25 at least.

1 A. I'm not familiar with the extra label.

2 Q. But you agree, because this is a case involving pharmacies
3 and billing, that at least one team member would have looked
4 into how the prescription software system at Pharmacare worked,
5 right?

6 A. Someone should have investigated the software system, yes.

7 Q. And your understanding is someone did, right?

8 A. I'm not sure.

9 Q. All right. So let's go -- so I should have clarified that
10 last page with the -- what could be patients' names -- probably
11 are patients' names, actually.

12 Doesn't say what type of prescriptions they got, but it
13 says -- that's a different dumpster inventory, right? I guess
14 there was a second bag that was inventoried?

15 A. That's what the report says. "Bag 2 of 2."

16 Q. Okay. And let's just go to the next page. See how
17 there's some -- in the trash, there's some Amerisource Bergen
18 documents?

19 A. Yes.

20 Q. And there are some -- small number of what are referred to
21 as medicine bottles?

22 A. Yes.

23 Q. There's, maybe, 10 or fewer reports?

24 A. Scroll down.

25 Yes.

1 Q. And then it goes on to talk about more miscellaneous
2 documents that goes to the end of the report, right?

3 MR. EISER: Your Honor, I'm afraid we don't have this
4 document. Has this been provided?

5 MR. GREENBERG: Was a copy not handed to you when I
6 started? I'm sorry.

7 THE COURT: The whole thing we've been going through
8 for the last 30 minutes?

9 MR. EISER: Yeah. I thought it was in there, and I
10 couldn't find it.

11 MR. GREENBERG: I thought I --

12 THE COURT: Let me just ask you: The purpose of going
13 through this document line by line is to basically show that
14 the trash pulls and the surveillance didn't turn up anything of
15 an incriminatory nature; is that -- am I --

16 MR. GREENBERG: In part. And it's also to impeach
17 Special Agent Ryan's testimony about seeing late-night activity
18 at these pharmacies.

19 THE COURT: All right. Go ahead.

20 MR. GREENBERG: I mean, I think I've made my point at
21 this stage, Your Honor, and I'm not sure I have anything
22 else -- let me just confer briefly with -- nothing further,
23 Your Honor.

24 MR. PHELPS: Your Honor, we need a minute on this
25 document. We haven't seen it yet --

1 **MR. GREENBERG:** Oh, I'm sorry. I would move this into
2 evidence. I think there's no question -- it's stipulated to
3 authenticity -- well, actually not yet, but we assume it would
4 be. It's obviously a report prepared during the investigation.
5 It's relevant.

6 **THE COURT:** It's been so long since we started it.
7 Did this witness prepare the report?

8 **MR. GREENBERG:** I apologize, Your Honor, for that.
9 It was Laurie Gutberlet, but it's on activity that
10 included Special Agent Ryan.

11 **THE COURT:** Let me give defense a chance to look at it
12 and see if they object first.

13 Stop the clock.

14 **MR. EISER:** We do. Ms. Gutberlet was here, he could
15 have gone through that, laid a foundation for it; didn't.
16 Again, we get this format of something conveyed from somebody
17 else, and then he throws it at this person. And we haven't
18 even seen it.

19 **MR. GREENBERG:** Your Honor, this goes directly to the
20 false allegations about late-night billings and what their
21 meaning was and how often they happened.

22 I mean, it refers -- it's a memo. Special Agent Ryan has
23 testified that he read the memos prepared by Gutberlet. This
24 is by Laurie Gutberlet. It talks about Lating and Mosley.

25 I can't -- I mean, I think we got this from either the

1 Government, the Maryland Office of the Attorney General, or
2 both. I don't know what they mean they haven't seen it or they
3 don't have it. That's not our issue.

4 **THE COURT:** This was not included on the exhibit list?

5 **MR. GREENBERG:** It's for impeachment, Your Honor. And
6 now we're going to move it in because of all these --

7 **THE COURT:** All right.

8 (Counsel conferring.)

9 **MR. GREENBERG:** Your Honor, just to make another point
10 about the relevance of this document, this surveillance
11 activity occurred at the end of the month of January. There is
12 a false allegation -- multiple false allegations in the Lating
13 affidavit about end-of-month activity.

14 **THE COURT:** All right. Any objection?

15 **MR. EISER:** To this document?

16 **THE COURT:** Yes.

17 **MR. EISER:** Yes.

18 **THE COURT:** What's the basis?

19 **MR. EISER:** As we stated, I don't --

20 **THE COURT:** Well, it is impeachment, and this witness
21 did pretty much verify what it recites. I would have to
22 overrule the objection and admit it.

23 **MR. GREENBERG:** Thank you, Your Honor. Nothing
24 further for this witness.

25 **THE COURT:** What's the exhibit number?

1 **MR. GREENBERG:** 153.

2 **THE COURT:** Plaintiff 153 is admitted over the
3 defense's objection.

4 Anything further by way of questioning, Mr. Eiser?

5 **MR. EISER:** Yes.

6 - - -

7 **REDIRECT EXAMINATION**

8 - - -

9 **BY MR. EISER:**

10 **Q.** We just went through this thing exhaustively.

11 Was this the only days that you did surveillance activity
12 at these Pharmacare store?

13 **A.** No --

14 **MR. GREENBERG:** Objection to the extent it calls for
15 any information after July 23rd, 2013.

16 **THE COURT:** Just limit it to preindictment.

17 **THE WITNESS:** No, there were other surveillances
18 conducted.

19 **BY MR. EISER:**

20 **Q.** And that's what you were referring to on direct?

21 **A.** Yes.

22 **Q.** Okay. Let me ask you this: We spent a lot of time going
23 through these patients, and we spotted this name here, Sharon
24 Meck.

25 Does that name ring a bell for you?

1 A. Yes.

2 Q. Who is Sharon Meck?

3 A. I believe Sharon Meck was a patient, but also an office --
4 doctor's office manager or assistant. I recall meeting her
5 throughout the investigation.

6 Q. And what -- how was she significant in the investigation?

7 A. I can't recall specifically.

8 Q. Do you recall if she was an employee of a different
9 doctor's office?

10 MR. GREENBERG: He's leading, Your Honor. And the
11 witness already said "I don't recall." Unless he can refresh
12 his memory, this is --

13 THE COURT: He's just trying to refresh his memory.
14 Does that refresh your memory at all?

15 THE WITNESS: A little bit. She was an office
16 administrator in a doctor's office in Harford County close to
17 one of the CareMerica or Pharmacare stores. I can't recall
18 specific location or which specific doctor.

19 BY MR. FLOWERS:

20 Q. Was she referring patients from the doctor --

21 MR. GREENBERG: Objection, to the leading. This is
22 leading.

23 THE COURT: All right. I'll sustain it on the leading
24 basis.

25 MR. EISER: I'll rephrase.

1 **BY MR. EISER:**

2 **Q.** What was Ms. Meck's relationship, if you know, with
3 Mr. Annappareddy?

4 **MR. GREENBERG:** Objection, lack of foundation, no
5 establishment of any relationship. The witness doesn't
6 remember this person.

7 **THE COURT:** He said "if you know." What relationship,
8 if you know.

9 If you don't know, just say so.

10 **THE WITNESS:** I know its order of events.

11 **THE COURT:** All right. Well, go ahead.

12 **THE WITNESS:** I'm not sure when I learned it, but I
13 know that Ms. Meck was accepting what she called paperwork from
14 one of Annappareddy's employees, which, we believe, was payment
15 in result for referring patients. I can't recall specifically
16 when I learned that fact. But I do recall speaking with
17 Ms. Meck throughout the investigation.

18 **MR. GREENBERG:** Objection to the extent that that is
19 referring to a post-indictment interview, which it appears it
20 is.

21 **THE COURT:** If it's post indictment, I won't consider
22 it. And it's kind of vague right now.

23 **MR. GREENBERG:** I would move to strike the entire line
24 of questions because it appears that the allegations regarding
25 this person -- by the way, Mr. Annappareddy was acquitted in

1 this count -- that the allegations were all formed, that they
2 were ever in the superseding indictment in 2014.

3 **THE COURT:** All right. Before I can consider it, you
4 need to tie down whether it's preindictment or post indictment.
5 If he knows.

6 **BY MR. EISER:**

7 **Q.** Do you know?

8 **A.** I can't recall.

9 **THE COURT:** All right.

10 **MR. EISER:** Thank you, Your Honor.

11 **THE COURT:** Anything further?

12 **MR. GREENBERG:** No, Your Honor. We're done with
13 Special Agent Ryan.

14 **THE COURT:** Thank you, Mr. Ryan. You're excused.

15 (Witness exits.)

16 **THE COURT:** Please call your next witness.

17 **MS. FARBER:** Your Honor, the defense calls
18 Craig Blomquist.

19 (Witness enters.)

20 **THE CLERK:** Mr. Greenberg, I'm going to need a copy of
21 Plaintiff's 153.

22 (Counsel conferring.)

23 **MR. MILLER:** Can we make sure the Court gets copies of
24 all exhibits moving forward?

25 **MR. GREENBERG:** Yeah, I apologize, I should have

1 handed that to you.

2 **MR. FLOWERS:** Your Honor, we do have a small issue
3 before the witness actually takes the stand about his
4 testimony.

5 **THE COURT:** All right. Please step outside of the
6 courtroom just a minute.

7 (Witness exits.)

8 **THE COURT:** What's the objection?

9 **MR. FLOWERS:** The objection to this witness
10 testifying, Your Honor, is that he's testifying about Express
11 Scripts, which is a private insurer. As the Court is very well
12 aware, the Lating affidavit only dealt with government
13 insurers, Medicare, Medicaid, not private insurers. Therefore,
14 this testimony, not only is it irrelevant, but it's unfairly
15 prejudicial. Because we're going to have to go into,
16 obviously, you know, facts and take time that we should not
17 have to go into against our 30 hours. So for that reason, Your
18 Honor, this testimony, again, outside of the scope of the
19 affidavit, deals with private insurance; therefore, this
20 witness should not be allowed to testify.

21 **THE COURT:** What about that?

22 **MS. FARBER:** Your Honor, several points in response to
23 that.

24 First of all, a number of witnesses have testified that
25 based on the data analysis that they conducted, based on

1 MEDIC 1495, which went into the affidavit, private payor data
2 was missing, but they expected to get it, and they expected the
3 number, the dollar value of Mr. Annappareddy's fraud to shoot
4 up once they got that private payor data. So that's the first
5 thing, is that the private payor information was relevant to
6 everyone as they were going forward with this investigation and
7 putting their affidavit together.

8 Second, is that this goes to the state of mind of the
9 investigatory team because Laurie Gutberlet interviewed Craig
10 and Melinda Blomquist. And --

11 **THE COURT:** This is preindictment.

12 **MS. FARBER:** Preindictment, Your Honor. That exhibit
13 is Defense Exhibit 13. That interview is memorialized there.
14 And in that interview, as Mr. Blomquist will testify, he
15 provided physical evidence to Laurie Gutberlet showing that he
16 was billed for -- or that Pharmacare billed his insurance for a
17 prescription that he did not request, did not receive, and he
18 has physical evidence of that, that he provided to Laurie
19 Gutberlet. So that goes to the state of the mind of the
20 investigative team as they were trying to assess whether they
21 had probable cause to indict Mr. Annappareddy for fraud.

22 **MR. FLOWERS:** If I may respond, Your Honor. This is
23 the mini trial that we had warned about. Not only, again, are
24 we dealing with private insurance, which was not the subject of
25 the Lating affidavit, but also, I want to direct your attention

1 to the defense's exhibit -- Defense Exhibit 13, Your Honor.
2 And in Defense Exhibit 13, Your Honor, you will see -- and I
3 want to direct the Court's attention to Page 3 -- or Page 4,
4 rather, of Defense Exhibit 13.

5 And just to orient the Court and orient opposing counsel,
6 this is a memo that Laurie Gutberlet took of the witness that
7 is about to take the stand, Mr. Craig Blomquist, and his wife,
8 Melinda Blomquist. And if you look at the Page 4, which is now
9 up on the screen, you will see that the medications at issue,
10 one through six, have nothing to do with the Med-4 medications,
11 which have been the subject of the Lating affidavit, so those
12 medications, which are primarily HIV medications.

13 So, again, we're now about to go down a mini trial talking
14 about medications that had nothing to do with the
15 September 23rd, 2013, affidavit; therefore, had nothing to do,
16 really, with the probable cause that was brought or alleged in
17 that affidavit. That probable cause being linked, hinged, and
18 connected to Medicaid and Medicare; again, government programs,
19 not private insurance programs. So --

20 **THE COURT:** So you're saying if -- and I don't know
21 what it shows, but if this document shows fraudulent activity
22 to a different private insurer, it's not relevant to this case?
23 It's a relevant objection, in other words.

24 **MR. FLOWERS:** Not only is it a relevance objection,
25 but it's unfairly prejudicial. Because now what I've got to do

1 is --

2 **THE COURT:** How so? I mean, all evidence is designed
3 to be prejudicial by your opponent. So you've got to show the
4 danger of unfair prejudice substantially outweighs the
5 probative value. That's what Rule 403 calls for.

6 **MR. FLOWERS:** Absolutely.

7 **THE COURT:** It's a balancing process, but the scales
8 have got to be way out of balance to keep it out.

9 **MR. FLOWERS:** Well, as the Court is very well aware,
10 it's got to be not just prejudicial, but unfairly prejudicial,
11 under the Rule. And this is unfairly prejudicial because we
12 are strapped with a 30-hour time limit. They're now bringing
13 in a witness who has nothing to do with the probable cause for
14 Medicare and Medicaid fraud for which Mr. Annappareddy was
15 charged with in the July 23rd, 2013, affidavit.

16 We also now have got to take time to cross-examine this
17 witness on the fact that these medications, these six
18 medications that I've indicated here at the Defendant's
19 Exhibit 13, have nothing to do with the Med-4 analysis.

20 So it's for those reasons, Your Honor, we are now going to
21 walk down a mini trial on, again, something that had nothing to
22 do with the affidavit.

23 Now, certainly the Court and certainly the investigative
24 team can take into account, you know, other things and, quite
25 frankly, everything that was going on. But at some point, this

1 Court has to draw a line in the sand and say enough is enough.

2 Again, it would be one thing if this was a witness who was
3 going to get on here and talk about fraud that happened with
4 Med-4 medications and fraud that happened where Medicaid and
5 Medicare were defrauded. This is not that witness. This is
6 the wrong witness. This is a witness, again, that's unfairly
7 prejudicial. It's cumulative. We've already heard enough
8 evidence about this. And it's particularly unfairly
9 prejudicial in this type of a trial, where we are limited
10 strictly to 30 hours.

11 **THE COURT:** Well, on that line, let me just say --
12 (Court conferring.)

13 **THE COURT:** All right. My law clerk just points out
14 that the Lating affidavit does make reference to drugs outside
15 of the Med-4s. There's a mention in there.

16 **MR. FLOWERS:** That's right. But it doesn't mention
17 these drugs here that this witness is going to get on the stand
18 and talk about, right. And again, the Med-4s -- there is a
19 dispute between the parties about what's the scope of the
20 Med-4s. But even in that dispute, in that universe of what's
21 disputed, here's what's clear, here's what both parties agree
22 to: These drugs are not included in Med-4.

23 (Court conferring.)

24 **THE COURT:** My law clerk says it was 76 drugs total
25 referred to in the affidavit; is these drugs one of them?

1 **MR. FLOWERS:** Let me consult with co-counsel -- I
2 don't think so, but let me consult with co-counsel on that.

3 **THE COURT:** Ms. Farber, can you weigh in on that?

4 **MS. FARBER:** Your Honor, I don't know offhand. But if
5 I may take a moment while they're conferring to respond to some
6 of the points that they made.

7 **THE COURT:** Take a look at it.

8 **MS. FARBER:** As Mr. Miller pointed out, Med-4s were
9 the subject of the affidavit or were not the exclusive subject
10 of the affidavit.

11 When counsel says that this witness is unfairly
12 prejudicial, I believe what he means is that this witness is
13 devastating to the Plaintiff's case, and that is true. But
14 that does not mean that what the witness has to say is not
15 probative or that the probative value doesn't outweigh the
16 prejudice.

17 What Mr. Flowers said just now is that the team is
18 permitted to take into account the evidence that Mr. Blomquist
19 provided preindictment. And every single witness who has
20 testified about the damages has said that they expected that
21 damages figure to only go up once they got the private payor
22 data. And Mr. Blomquist is evocative of exactly that.

23 So as to their state of mind regarding whether they
24 believed there was probable cause to think that
25 Mr. Annappareddy was committing healthcare fraud, this witness,

1 which everyone knew about before the indictment, is the one.

2 You know, I'm not sure what the judge gets from reading
3 Defense Exhibit 13. For me, personally, the story doesn't jump
4 out just reading it on the page. Mr. Blomquist is not going to
5 take much time to describe the evidence that he provided to
6 Ms. Gutberlet.

7 As far as the point about cross-examination, this is not
8 going to take that much time. This witness can't be
9 cross-examined about what Med-4s are or what was included in
10 the MEDIC analysis; that's not a subject for this witness or
11 anything that could be explored here.

12 **MR. FLOWERS:** If I could respond, Your Honor.

13 Government counsel misunderstands the point. It's not
14 that I'm going to cross-examine this witness on what is Med-4
15 and what is not Med-4. I've got to cross-examine this witness
16 on these medications to establish for argument later on, more
17 time that we've got to take, that this is not a part of Med-4.

18 To answer Your Honor's very good question, are these six
19 drugs indicated in Government's Exhibit 13? Are these six
20 drugs a part of Plaintiff's Exhibit 70; that is, the Maura
21 Lating affidavit? The unequivocal answer is, no. We've just
22 reviewed it. None of these drugs are in the Lating affidavit.

23 This is, yet again, Your Honor this -- not only is it not
24 in the Lating affidavit, but to the extent that there is this
25 idea that opposing counsel said that once we found the private

1 payor information that somehow the loss would increase, well,
2 MEDIC 1495 had the information that was used for the Lating
3 affidavit. And in MEDIC 1495, these six drugs are not
4 included.

5 So, again, Your Honor we can put the witness on the stand.
6 We are then going to have to cross-examine the witness, as I've
7 said, on all of these issues. Time against us. Time that is
8 unfairly prejudicial, given that our time is very precious.

9 The Government -- this is, yet again, the Government
10 putting evidence before this Court, from our perspective, which
11 is totally irrelevant and unfairly prejudicial, and they're
12 able to do it in a way, Your Honor, where they don't have to
13 take up very much time.

14 **THE COURT:** All right. Here's what I'd like to do.
15 I'd like -- go ahead.

16 **MS. FARBER:** Thank you, Your Honor. With the Court's
17 indulgence.

18 It's irrelevant whether different drugs went into the
19 MEDIC analysis because the affidavit discusses the overall
20 fraud scheme of billing and not filling. And that's what
21 happened here. This witness also will corroborate -- provide
22 corroboration for Lisa Ridolfi, as Lisa Ridolfi is the one who
23 referred Gutberlet to these people.

24 In addition, I'll direct the Court to Paragraph 41 of the
25 affidavit, which is Plaintiff's Exhibit 70, which does

1 mention -- does reference Express Scripts, which is the
2 provider here. It does not talk about this prescription or
3 Mr. Blomquist, but there is a reference to -- that Express
4 Scripts informs someone that they were maxed out on their
5 prescription benefits for that year.

6 And that's very similar to what Mr. Blomquist will testify
7 happened, that his refills of a prescription, which Express
8 Scripts was his provider, his refills were exhausted because
9 Pharmacare billed for those prescriptions and did not fill
10 them, did not give them to him.

11 **THE COURT:** Hold on one second. All right. I think
12 we've had enough debate. Having listened carefully --

13 **MR. FLOWERS:** Your Honor --

14 **THE COURT:** Yes, sir.

15 **MR. FLOWERS:** One thing.

16 **THE COURT:** We've been going back and forth about four
17 times a piece now. Go ahead.

18 **MR. FLOWERS:** I understand.

19 But the Court needs to understand that, you know, they're
20 citing now Paragraph 41. I've now had a chance to look at
21 Paragraph 41. Paragraph 41 deals with a different customer,
22 not Craig Blomquist, and it also deals with a different drug.

23 So, again, you know, we're having to cross-examine a -- a
24 person who is outside of the four corners of the Maura Lating
25 affidavit. And for all of the reasons that I've already

1 explained, it's irrelevant. It is unfairly prejudicial. And,
2 quite frankly, to the extent that we're now talking about
3 private payors, the Court has already heard that. It's
4 cumulative under Rule 403.

5 **THE COURT:** All right. With all due respect, after
6 hearing from counsel from both sides, I'm going to overrule the
7 objection and allow this testimony in. I will reserve judgment
8 on the cross-examination whether it should count against the
9 Plaintiff or not since this is a new witness.

10 **MS. FARBER:** Your Honor, this witness was on our
11 exhibit list, it is not a new witness, respectfully.

12 **THE COURT:** All right. Let me just say, also, about
13 time for cross-examination. Some of the cross-examination, for
14 example, Mrs. Cannata yesterday, she was asked six times about
15 being a rookie and what her job description was and what her
16 boss's job description was, and it just burned up enormous
17 amounts of time asking the same question over and over and
18 over. So I just say that for what it's worth, because the
19 clock is running when all those repetitive questions are asked.

20 So with that, the objection is overruled.

21 Bring in the witness.

22 **MR. FLOWERS:** Thank you, Your Honor.

23 **THE COURT:** One more thing to put on the record.
24 There's a lot of case law that says that Rule 403, the
25 balancing test that requires the Court to look at the danger of

1 unfair prejudice substantially outweighing the probative value,
2 is much more loosely applied in a bench trial. When you've got
3 a jury, you have to calibrate it very finely. But in a bench
4 trial, we judges have thick skin, we've been around the block,
5 we can give it the weight it deserves. And I mention that, as
6 well, in admitting evidence.

7 **MR. FLOWERS:** I understand, Your Honor. Also, for the
8 purposes of the record, I do need to indicate that this is not
9 the typical bench trial. This is a bench trial, which we are
10 under very, very difficult and -- and time constraints with
11 30 hours. And so it's for those reasons, again, that we
12 believe --

13 **THE COURT:** All right. I said I'll take advisement
14 whether we'll count cross-examination time or not.

15 **MR. FLOWERS:** Thank you, Your Honor.

16 **THE COURT:** Please bring in the witness.

17 (Witness enters.)

18 **THE CLERK:** Sir, please remain standing and raise your
19 right hand.

20 (Witness sworn.)

21 **THE CLERK:** You may be seated.

22 For the record, sir, could you please state and spell your
23 first and last name, please.

24 **THE WITNESS:** Craig, C-R-A-I-G; Blomquist,
25 B-L-O-M-Q-U-I-S-T.

1 THE CLERK: Thank you.

2 - - -

3 DIRECT EXAMINATION

4 - - -

5 BY MS. FARBER:

6 Q. Good afternoon, Mr. Blomquist.

7 In what county do you live?

8 A. Harford County.

9 Q. How long have you lived there?

10 A. Going on 13 years.

11 Q. Do you live with anybody in Harford County?

12 A. I live with my wife and my son.

13 Q. Are you familiar or were you familiar with the Pharmacare
14 chain of pharmacies?

15 A. Yes.

16 Q. How were you familiar?

17 A. We got our medications from Pharmacare for a time.

18 Q. Which Pharmacare location did you use?

19 A. On Plumtree Road, in Bel Air.

20 Q. And why did you get your prescriptions from that
21 Pharmacare location?

22 A. Our daughter had a lot of allergy and immune system
23 issues, and we -- her doctor was right next to Pharmacare,
24 Dr. Martin.

25 Q. Mr. Blomquist, did you ever have a problem refilling a

1 medication at Pharmacare?

2 A. Yes.

3 Q. Tell us about what happened.

4 A. We had a trip planned to Boston and needed to make sure
5 that we had enough medication for our daughter. We went to go
6 refill a prescription, and we were told -- it was for Xopenex,
7 which is an asthma medication, we were told we had no refills
8 left.

9 Q. Who told you there were no refills left?

10 A. The man behind the counter.

11 Q. A man behind the counter where?

12 A. Oh. At Pharmacare, in that pharmacy on Plumtree.

13 Q. And approximately what month and year did this occur?

14 A. I'm stretching back a long time. It was around 2012.

15 Q. Does July of 2012 sound familiar?

16 A. Yes.

17 Q. Now, you mentioned the prescription you were trying to
18 refill was Xopenex. Whose prescription was that?

19 A. It was for my daughter.

20 Q. And how often did she use Xopenex?

21 A. She would use it only as needed if she had an asthma
22 attack. She would also use it -- she, as I stated before,
23 has -- has and had, immune system issues. A couple of times a
24 year she would get bronchitis, which would sometimes turn into
25 pneumonia. If she got sick, the Xopenex, she would take it

1 regularly daily, I think twice a day, to keep her lungs clear
2 as she was fighting the bronchitis or pneumonia.

3 Q. And if she wasn't sick, how often did she take it?

4 A. Not at all.

5 Q. Now, as of July of 2012, as of when you had this issue
6 refilling your prescription, had you used up all of your
7 Xopenex refills?

8 A. No.

9 Q. How do you know that, sir?

10 A. Well, we still had the package for the last time that we'd
11 had it filled. And I don't know if I remember for sure, I
12 think I had three refills still left on that package.

13 Q. So you had the box of Xopenex from the last time you went
14 into Pharmacare?

15 A. Correct.

16 Q. Did you provide that box to an investigator?

17 A. Yes, I did.

18 MS. FARBER: Your Honor, I'm now referring to -- I'm
19 referring to Defense Exhibit 13, the page that is Bates-stamped
20 in the bottom right USA0853.

21 THE COURT: You're offering it in evidence at this
22 time?

23 MS. FARBER: Defense 13 is already in evidence, Your
24 Honor.

25 THE COURT: All right.

1 BY MS. FARBER:

2 Q. So that page, again, is Bates-stamped USA0853, Defense 13,
3 and it is in evidence.

4 Mr. Blomquist, what is this that I'm showing you?

5 A. This looks like a scanned copy of our Xopenex box.

6 Q. Do you see the date October 3rd, 2011?

7 A. Yes.

8 Q. Was that the last date that you refilled the Xopenex
9 prescription?

10 A. I believe so.

11 Q. And this was the box that you had at your house?

12 A. Yes.

13 Q. And do you see where it says "Three refills"?

14 A. Yes.

15 Q. Is that what you're referring to when you said that you
16 thought you had three refills left?

17 A. Yes.

18 Q. So going back to the events.

19 Did you confront anyone at Pharmacare with this
20 information?

21 A. Well, we had tried to call in a refill for it before we
22 left on our trip. We were told we had none left. I -- that
23 was an automated phone system. So we went in the next day to
24 the pharmacy. Actually, I think we called on the phone first
25 and were told, again, that we had zero refills left.

1 But I had that package. And I said, "I've got the last
2 one I filled, I'm going to bring it in and show it to you."

3 Q. What happened next?

4 A. He looked it up and insisted that it was wrong, that we
5 still had zero refills left.

6 Q. Who is -- who did you show the box to at Pharmacare?

7 A. It was a male. I don't know what his name was.

8 Q. Was it a male -- in what part of the store?

9 A. I don't understand the question.

10 Q. Was he at the counter?

11 A. Yes, yes.

12 Q. And what ethnicity was the male?

13 A. He appeared to me to be of Indian descent.

14 Q. And so after this person told you that he'd looked it up
15 and there were no refills left, what happened?

16 A. Well, I asked him to look up on his computer what date --
17 what was the last date that I had refilled this product,
18 because I was absolutely positive, certain that I had refills
19 left. He looked it up and indicated a date, which was the same
20 date that was on that box.

21 So his own records were contradicting themselves.

22 Q. And so how did this -- what happened next?

23 A. Well, I said, "Your own records contradict the idea that I
24 have zero refills left. I need you to give me a refill. We're
25 leaving. I've got to have one." He did. He gave me a box,

1 and we figured we'd sort the mess out after we got home.

2 Q. Did you sort the mess out after you got home?

3 A. Kinda.

4 Q. What happened?

5 A. Well, we talked to Lisa -- her last name starts with an R.
6 She worked there. And she said she was going to dig into
7 stuff. But --

8 Q. So let me -- go ahead.

9 A. As far as I could tell, things were still kind of screwy.
10 I don't know that we ever really got to the bottom of anything.

11 Q. So when did you go back into the pharmacy to talk to Lisa
12 R.?

13 A. It had to have been after we got back from our trip. I
14 don't know of a specific date.

15 Q. How did you know the person's name?

16 A. She had a daughter who went to school with my son. We
17 weren't friends. Acquaintances, at best. I mean, we kind of
18 knew of each other.

19 Q. From the neighborhood?

20 A. Well, we didn't even live in the same neighborhood. But
21 our kids had done a school project, at some point, together.

22 Q. Were you friends with Lisa Ridolfi?

23 A. No.

24 Q. Or Lisa R.?

25 A. No. I had been to her home once, never inside, went to

1 pick up my son, as the two kids were working on their school
2 project.

3 Q. Now, what did Lisa R. tell you when you brought this issue
4 to her attention?

5 A. She was really confused. She says, "I don't understand
6 why this is going on." She says, "I'm going to dig into it.
7 I'm going to try and figure out what's going on."

8 And, I mean, she didn't ever come back to us and say,
9 "Hey, I figured it out."

10 Q. Did you meet with an investigator about your experience
11 with Pharmacare?

12 A. Yes.

13 Q. And did you meet with the investigator more than once?

14 A. Yes.

15 Q. Who else was present at the meeting with the investigator?

16 A. My wife.

17 Q. And what is your wife's name?

18 A. Melinda.

19 Q. What did the investigator want to know -- well, first of
20 all, was it a male or female investigator?

21 A. It was a female. I think her name was Lori or Laura.

22 Q. And what did she want to know?

23 A. Well, our experience with Pharmacare as far as our
24 prescriptions were concerned.

25 Q. Did she tell you anything else about what she was trying

1 to find out?

2 **MR. FLOWERS:** Objection to the hearsay, Your Honor.
3 "Did she tell you anything else."

4 **MS. FARBER:** It's not for the truth of the matter,
5 Your Honor. It's just for the fact of the statement.

6 **MR. FLOWERS:** I don't even understand --

7 **THE COURT:** Well, obviously, she was investigating
8 this case.

9 I'll sustain the objection.

10 **BY MS. FARBER:**

11 **Q.** What did you tell Ms. Gutberlet?

12 **A.** We actually shared with her our financial records, gave
13 her the prescriptions. Besides the Xopenex, there were others.
14 And shared with her the records that we had.

15 **Q.** When you say the "records" that you had, what are you
16 talking about?

17 **A.** Financial records of what we had actually paid for at the
18 pharmacy.

19 **Q.** What were those financial records?

20 **A.** I don't know specifically. Aside from computer records
21 that -- my wife does the finances. But she pulled up records
22 and gave them to Laurie.

23 **Q.** So you kept household records of prescriptions you had
24 paid for?

25 **A.** Right.

1 Q. Okay. And then did you show Laurie any other documents?

2 A. I'm really not sure.

3 Q. Okay. I'm going to show you Defense Exhibit 13, at the
4 page that Bates stamped USA49 --

5 MR. FLOWERS: Your Honor, I object to showing this
6 exhibit for lack of foundation.

7 THE COURT: What is it? What is Defense Exhibit 13?

8 MS. FARBER: Defense Exhibit 13 is the memo of the
9 interview with Mr. Blomquist. And I'm showing him an
10 attachment to that memo that is a document that they provided
11 to Ms. Gutberlet to see if it refreshes his recollection.

12 THE COURT: Is the report itself, not the attachment,
13 is the report in evidence already?

14 MS. FARBER: The report and attachments are in
15 evidence. Defense Exhibit 13 consists of the report and a
16 number of attachments, so this document is already in evidence.
17 I am not showing him Laurie Gutberlet's report. I'm showing
18 him an attachment that is a document that they provided to
19 Ms. Gutberlet.

20 MR. FLOWERS: And I object to the speaking objection,
21 which she's now leading the witness and telling the witness --

22 THE COURT: It's just an attachment to the exhibit. I
23 have no problem with that. So what's the objection?

24 MR. FLOWERS: The objection is that there's a lack of
25 foundation. Mr. Blomquist testified that he can't remember

1 what he shared with Laurie Gutberlet. That's what he said.
2 And there was no foundation laid --

3 **THE COURT:** Let me ask the witness to step out, and
4 let me find out what's in the attachment.

5 Please step outside just a moment. I apologize.

6 **MS. FARBER:** And, Mr. Blomquist, please don't discuss
7 your testimony while you're outside.

8 (Witness exits.)

9 **THE COURT:** All right. What is in the attachment, so
10 I'll know?

11 **MS. FARBER:** Yeah. Your Honor, this is the member
12 benefits statement that the Blomquists provided to Laurie
13 Gutberlet. I'm just trying to refresh his recollection, which
14 I'm permitted to do with anything, to see if this refreshes his
15 memory about the documents that he provided to Laurie
16 Gutberlet, which they reviewed together in their meeting.

17 **THE COURT:** We have had that said by the Plaintiff's
18 side of the case, that you can use anything to refresh
19 recollection.

20 **MR. FLOWERS:** And it's said by the Plaintiff's side of
21 the case because that's, in fact, the law.

22 The issue here, Your Honor, is even if you want to refresh
23 with, you know, a feather, a bucket, you still have to lay
24 foundation that that feather or that bucket will actually
25 refresh --

1 **THE COURT:** Right. And we won't know until we put the
2 witness on the stand and ask him if it refreshes his memory.
3 That's the only way we can --

4 **MR. FLOWERS:** I think the foundational question is,
5 you know, "Would looking at the Express Scripts refresh your
6 recollection?" Not just, "Let me show you a random document
7 that I don't know will refresh your recollection," particularly
8 given all the leading that's kind of been going on.

9 **THE COURT:** We've had a lot of documents used to
10 refresh recollections in this case. And we'll bring the
11 witness back. If he doesn't remember it, we'll move on.

12 **MS. FARBER:** Yes, Your Honor.

13 **MR. FLOWERS:** Very well, Your Honor.

14 **THE COURT:** I'll overrule the objection to the extent
15 it seeks to prohibit the witness from even seeing this
16 attachment.

17 **MR. FLOWERS:** Very well, Your Honor. Thank you.

18 (Witness enters.)

19 **BY MS. FARBER:**

20 **Q.** Mr. Blomquist, I'm going to show you what's already been
21 admitted into evidence as Defense Exhibit 13, the page that is
22 Bates-stamped at the bottom USA0849. There's the Bates-stamped
23 at the bottom.

24 And I'm showing you the top of the document now. What is
25 this document?

1 A. Is this a document of Express Scripts, that was our
2 insurer, that shows the prescriptions that we've had filled.

3 Q. And did you review this document with Laurie?

4 A. Yes.

5 Q. When you reviewed records with Laurie, did she have her
6 own records that she was showing you?

7 A. Yes.

8 Q. And what records was she showing you?

9 A. She showed us records of what Pharmacare had applied to
10 our insurance.

11 Q. And did you compare what Pharmacare had applied to your
12 insurance with what you requested and paid for?

13 A. Yes.

14 Q. Were there any instances where Pharmacare applied
15 something to your insurance that you did not request or pay
16 for?

17 A. Yeah, there were a number of them.

18 Q. We'll walk through them just for one of the drugs you
19 discussed.

20 But let me back up for a moment and ask: Did you ever
21 tell Pharmacare that you wanted Xopenex to be automatically
22 refilled?

23 A. No.

24 Q. Did you ever grant them permission to automatically refill
25 Xopenex?

1 A. No.

2 Q. Now, let's focus on Xopenex.

3 MS. FARBER: And, Your Honor, that'll be really the
4 only drug we discuss. We're not going to go through all of
5 them.

6 BY MS. FARBER:

7 Q. I'm now going to show you a highlighted version of Defense
8 Exhibit 13, which is already in evidence, Bates-stamped
9 USA0849, that's the member benefits statement we were just
10 looking at, Mr. Blomquist; is that right?

11 A. Yes.

12 Q. Now, what I've done is I have highlighted --

13 MR. FLOWERS: Objection. Your Honor, I object to the
14 pre-highlighted exhibit. It's an exhibit that a lawyer has
15 created. It's actually creating evidence in the case because
16 this is not an exhibit that the witness -- that is,
17 Mr. Blomquist -- created by highlighting the exhibit. I know
18 that has been done with other, I will say, Government witnesses
19 in this case. Mr. Blomquist is not a Government witness. So,
20 again, that is the basis of my objection.

21 MS. FARBER: Your Honor, I made clear that I applied
22 the highlighting, which is what we've been doing without trial.
23 If counsel would prefer --

24 THE COURT: I understand. The Government's hand was
25 involved in putting this blue highlighting on there. And the

1 witness didn't do it. It was done in preparation for trial. I
2 understand all that. But I think it helps move the trial along
3 expeditiously.

4 So overruled.

5 **BY MS. FARBER:**

6 **Q.** Mr. Blomquist, I'm showing you what's already been entered
7 into evidence as Defense Exhibit 13, Bates-stamp USA0849, the
8 Member Benefits Statement.

9 And I have highlighted in blue each instance of Xopenex on
10 this member benefits statement.

11 Do you see that?

12 **A.** Yes.

13 **Q.** Now, the first instance is dated 9/14/11.

14 Do you see that?

15 **A.** Yes.

16 **Q.** Did you pick up that prescription?

17 **A.** Yes.

18 **Q.** The next one is October 3rd, 2011. Did you pick up that
19 one?

20 **A.** I think so. My recollection is that we filled the initial
21 prescription, that we had it refilled once.

22 **Q.** And I'm going to show you -- I'm going to pause here for a
23 moment to show you in Defense Exhibit 13, already in evidence,
24 the page Bates-stamped USA0853, this is a prescription label
25 dated 10/3/2011.

1 Do you see that?

2 A. Yes.

3 Q. And this was the box that you still had in July of 2012,
4 correct?

5 A. Right.

6 Q. Okay. And that date, October 3rd, 2011, corresponds with
7 the October 3rd, 2011, date on Defense Exhibit 13, 849.

8 A. Yes.

9 Q. Now, the next instance here is October 10, 2011.

10 Do you see that?

11 A. Yes.

12 Q. Did you request that prescription?

13 A. That one specifically, only if that coincides with the one
14 that we tried to get before our trip to Boston.

15 Q. Okay. So you didn't request a second prescription in
16 October of 2011?

17 A. No.

18 Q. And then the next --

19 A. We wouldn't have used it yet.

20 Q. You still had some left in the October 3rd box?

21 A. Correct.

22 Q. Now, looking at the next one, it's October 21st, 2011.

23 Do you see that?

24 A. Yes.

25 Q. Did you ever pick up that prescription?

1 A. No.

2 Q. And then November 17th, 2011.

3 Do you see that?

4 A. Yes.

5 Q. Did you pick that one up?

6 A. No.

7 Q. Did you ever know that these were even filed?

8 A. No.

9 Q. Was your daughter going through her emergency inhaler at
10 that time, at that rate?

11 A. No.

12 Q. Okay. Now, did you tell the investigator that you had not
13 picked up prescriptions on October 10th, October 21st, and
14 November 17th?

15 A. Correct.

16 Q. Did you have household documents or household records to
17 verify that you had never picked up or paid for those
18 prescriptions?

19 A. Yes.

20 Q. Did you show those to the investigator?

21 A. Yes.

22 Q. And did you provide her with the box from your July 2012
23 refill?

24 A. Yes.

25 Q. Now, this July 2012 refill, this is the one that you got

1 after you went in and complained to Pharmacare, right?

2 A. I think so.

3 Q. Before your vacation?

4 A. Yes.

5 Q. Now, I'm showing you what's already been entered into
6 evidence as Defense Exhibit 13, the page is Bates-stamped
7 USA0854.

8 Now, is this the box that you got when you refilled your
9 daughter's Xopenex prescription in July of 2012?

10 A. We're talking about right before we left on that trip --

11 Q. Yes, sir.

12 A. -- when I was trying to get that refilled?

13 Q. Yes, sir.

14 A. Yes, I believe it is.

15 Q. And you gave this to the investigator --

16 A. Yes.

17 Q. -- in your meeting.

18 A. Yes.

19 Q. Sir, I'm going to direct your attention to the date that
20 I've highlighted. What is that date?

21 A. November 17th, 2011.

22 Q. And what day -- or what month and year did you receive
23 this box with this label on it?

24 A. That was after -- I mean, it was 2012.

25 Q. That was when you were taking your summer vacation?

1 A. Right, right. This was -- this was when I demanded he
2 fill -- refill my prescription. Even though the record said I
3 had zero, this is what I received.

4 Q. And when you spoke with the investigator, did you discover
5 that there were other drugs that Pharmacare refilled that you
6 never got?

7 A. Yes.

8 Q. And did you walk through the evidence that we have
9 discussed with that investigator?

10 A. Yeah, same as with the Xopenex, we did with the others.

11 Q. Mr. Blomquist, did you testify in Mr. Annappareddy's
12 criminal trial?

13 A. Yes.

14 Q. And did you testify about the same matters that you
15 discussed with the investigator?

16 A. Yes.

17 Q. During your trial testimony, Mr. Blomquist, were you shown
18 signature logs for your prescriptions?

19 A. Yes.

20 Q. And were you shown any signature logs that had a signature
21 on it that was not yours?

22 A. Yes.

23 Q. Were you shown signature logs that had a forged signature
24 on them?

25 A. Yes.

1 Q. Mr. Blomquist, were you truthful during your meetings with
2 the investigator in 2012?

3 A. Yes.

4 Q. Would you describe the demeanor of the investigator during
5 your meeting?

6 A. Very pleasant. I considered her to be very forthright and
7 doing her job appropriately.

8 Q. At any point in your meeting with her, did you feel
9 pressured to do anything but tell the truth?

10 A. Absolute not.

11 MS. FARBER: No further questions at this time.

12 THE COURT: All right.

13 You may cross-examine.

14 MR. FLOWERS: Thank you, Your Honor.

15 - - -

16 CROSS-EXAMINATION

17 - - -

18 BY MR. FLOWERS:

19 Q. Good afternoon, Mr. Blomquist. My name is Kobie Flowers,
20 and I represent Mr. Reddy Annappareddy with my co-counsel here
21 at the table behind me.

22 I'm going to ask you a few questions about your testimony,
23 sir. And I want to start out by saying I'm sorry that you're
24 prescriptions were not refilled for your daughter. I'm also --
25 want to start out by saying that I hope your daughter is fine

1 wherever she is.

2 With that said, Mr. Blomquist, I want to start out with
3 some questions about Express Scripts. That's your insurance
4 carrier, correct?

5 A. It was at the time.

6 Q. It was at the time in July 2012?

7 A. Correct.

8 Q. You understand that Express Scripts is a private insurer?

9 A. Yes.

10 Q. I now want to ask you some questions, Mr. Blomquist, about
11 your testimony that you gave about the signature logs. Do you
12 recall that testimony, sir?

13 A. Yes.

14 Q. When you went to Plumtree back in 2012, it was the
15 practice of Plumtree for you to sign a signature log when you
16 received your daughter's prescription?

17 A. Correct.

18 Q. When you signed that signature logs, that signature log
19 stayed there at Plumtree?

20 A. As far as I know.

21 Q. You indicated that when you testified in the trial, you
22 were shown signature logs that had your signature forged; do
23 you recall that testimony, sir?

24 A. Yes, I do.

25 Q. You don't know who forged your signature, do you?

1 A. No, I certainly don't.

2 Q. You don't know whether Lisa Ridolfi forged that signature,
3 do you?

4 A. I wouldn't know.

5 Q. And I want to ask you some more questions about Lisa
6 Ridolfi.

7 You testified earlier that you knew Lisa Ridolfi outside
8 of your interactions with her at Pharmacare, correct?

9 A. Yeah. Just the most basic amount.

10 Q. You had the most basic amount of knowledge with her
11 through your kids, correct?

12 A. Right.

13 Q. You knew that Lisa Ridolfi was the pharmacist at Plumtree?

14 A. Yes.

15 Q. Taking you back to that unfortunate incident in July of
16 2012 when you were -- had to fight to get the Xopenex
17 medication. You indicated that after the Pharmacare employee
18 gave you the prescription so that you could go on your
19 vacation, sometime after that you went back to Pharmacare, you
20 spoke to Lisa Ridolfi about what happened, correct?

21 A. Yes.

22 Q. You didn't speak to Reddy Annappareddy about what
23 happened, did you?

24 A. No.

25 Q. Correct?

1 A. I only spoke to Lisa.

2 Q. You spoke to no one except for Lisa, correct?

3 A. Concerning the details of -- yes, only Lisa. She's the
4 only one at the pharmacy that I spoke to about it.

5 Q. She's the only one at the pharmacy that you spoke to about
6 it. It's fair to say there was nobody else at the pharmacy
7 that you spoke to about what happened, aside from Lisa Ridolfi,
8 correct?

9 A. That is correct.

10 Q. Now, I understand, again, your testimony was the day that
11 you went in to get the refill that you -- were due to you, you
12 spoke to someone, I believe you said that person was of Indian
13 descent?

14 A. It was a man. It wasn't Lisa. And I have no idea what
15 his name was.

16 Q. Later, you speak with Lisa about what had happened before,
17 correct?

18 A. Correct.

19 Q. And you agree that Lisa is a white, American woman?

20 A. I agree.

21 Q. Mr. Blomquist, I have just a couple more questions.

22 MR. FLOWERS: But before I do, with the Court's
23 indulgence, I would just like to consult with my co-counsel and
24 Mr. Annappareddy.

25 THE COURT: Go ahead.

1 **MR. FLOWERS:** And then, like I said, I just have a
2 couple more questions for you, Mr. Blomquist.

3 (Counsel conferring.)

4 **MR. FLOWERS:** All right, Mr. Blomquist, thank you so
5 much for that time.

6 And Judge Anderson, thank you so much for that time.

7 **BY MR. FLOWERS:**

8 **Q.** Like I said, Mr. Blomquist, I only had a couple questions
9 for you, and I think I can pass you back to the Government, if
10 they have additional questions.

11 The Xopenex that your daughter was using back in July of
12 2012, you agree, Mr. Blomquist, that Xopenex is not an HIV
13 medication?

14 **A.** That is true, yeah. Well, I'm not an expert on
15 medications. As far as I know, it's not used for that.

16 **Q.** Right. And that's all I want you to talk about, is just
17 what you have personal knowledge of. Okay?

18 As far as you know, Xopenex is not an HIV medication,
19 correct?

20 **A.** Correct.

21 **Q.** As far as you know, Xopenex is not a medication for mental
22 illness?

23 **A.** As far as I know.

24 **Q.** As far as you know, sir, Xopenex is not a medication for
25 addiction?

1 A. As far as I know.

2 Q. As far as you know, Mr. Blomquist, Xopenex is not a
3 medication for hepatitis C?

4 A. As far as I know.

5 Q. And, again, as far as you know, Xopenex is not a
6 medication for cancer?

7 A. As far as I know.

8 MR. FLOWERS: Thank you, Mr. Blomquist, for your time.

9 THE COURT: Thank you.

10 Any redirect?

11 MS. FARBER: No, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 You're excused.

14 (Witness exits.)

15 THE COURT: Please call your next witness.

16 MR. PHELPS: Your Honor, would now be a good time for
17 a break?

18 THE COURT: All right. Let's take a recess. It's 25
19 after, let's take a 15-minute recess.

20 MR. PHELPS: Your Honor, we don't have another
21 witness.

22 MR. FLOWERS: We'll see -- we've got another witness.

23 Let's see if he's here. He was going to get here at 4:00.

24 He's actually working over at the University of Maryland. He's

25 a pharmacist. So he's doing his best to get here at 4:00.

1 **THE COURT:** All right. So we don't have anybody
2 between now and 4:00? Just check and send word when you think
3 he'll be here.

4 We'll be in recess.

5 (All Counsel - "Thank you, Your Honor.")

6 **THE CLERK:** All rise. This Honorable Court is now in
7 recess.

8 (Whereupon, a recess was taken from 3:26 p.m. to 3:45
9 p.m.)

10 **THE CLERK:** All rise. This Honorable Court resumes in
11 session.

12 **THE COURT:** Please be seated.

13 All right. I understand we now moved back to the
14 Plaintiff's case in chief for another witness; is that correct?

15 **MR. FLOWERS:** Yes, Your Honor.

16 **THE COURT:** All right. Please call your witness.

17 **MR. FLOWERS:** Thank you, Your Honor.

18 The Plaintiff calls Dr. Neelesh Vaidya.

19 **THE CLERK:** Sir, please remain standing and raise your
20 right hand.

21 (Witness sworn.)

22 **THE CLERK:** You may be seated.

23 Sir, for the record, could you please state and spell your
24 first and last name.

25 **THE WITNESS:** Neelesh K. Vaidya, N-E-E-L-E-S-H; last

1 name is Vaidya, V-A-I-D-Y-A.

2 THE CLERK: Thank you.

3 - - -

4 DIRECT EXAMINATION

5 - - -

6 BY MR. FLOWERS:

7 Q. Dr. Vaidya, good afternoon, sir.

8 A. Good afternoon.

9 Q. Can you please tell Judge Anderson where did you rush from
10 to get here to testify?

11 A. I came straight from work.

12 Q. And where is work for you, sir?

13 A. University of Maryland Medical Center.

14 Q. What's your position at the University of Maryland Medical
15 Center?

16 A. I'm a clinical pharmacist for oncology and critical care.

17 Q. And what's your title there at the University of Maryland,
18 sir?

19 A. Clinical staff pharmacist.

20 Q. Can you explain to the Court at the University of Maryland
21 what positions you've held?

22 A. I started as a manager of Shock Trauma pharmacy, and then
23 moved to operations manager, and then to University Specialty
24 Hospital as director of pharmacy, and then I became a regular
25 staff pharmacist.

1 Q. How long have you been working at the University of
2 Maryland Medical Center, sir?

3 A. Twenty years.

4 Q. Before your 20 years at the University of Maryland Medical
5 Center, where did you work?

6 A. I work with one company, but several names. Rombro Health
7 Services, Capstone, Medicare, all these different companies
8 that dealing with long-term care pharmacy and correctional
9 services.

10 Q. When you worked at Medicare, do you recall generally what
11 years you worked for Medicare?

12 A. 2001 to 2003.

13 Q. When you worked at Medicare from 2001 to 2003, what was
14 your title, sir?

15 A. I was manager of pharmacy operations.

16 Q. You also mentioned that you worked for Rombro; do you
17 remember that testimony, sir?

18 A. Yes.

19 Q. When did you work with Rombro?

20 A. So I started working with Rombro in 1984 as a pharmacy
21 technician. And then I was enrolled in pharmacy school, so I
22 graduated and continued working with them. Then Rombro got
23 sold, so so many different names came through.

24 Q. And when did you stop working at Rombro, even though the
25 name changed over the years?

1 A. 2001.

2 Q. And what was the highest position you left when you left
3 kind of this entity that was formerly named Rombro?

4 A. I was operations manager.

5 Q. Dr. Vaidya, can you tell the Court where you were
6 educated. First, let's start with your undergraduate degree,
7 and we'll walk all the way up to your Doctorate in Pharmacy.

8 So where did you get your bachelor's degree, sir?

9 A. So I did my bachelor twice. I did my B. Pharm in India.
10 When I came to this country, I did undergraduate again, BS
11 Pharmacy at University of Maryland School of Pharmacy. And
12 then I went back and did my Pharm D., Doctorate of Pharmacy.

13 Q. When you graduated from the University of Maryland with
14 your Bachelor's of Science in Pharmacy, what year was that,
15 sir?

16 A. 1988.

17 Q. And then when you finally graduated with a doctorate in
18 pharmacy, what year was that?

19 A. 2005.

20 Q. And if I understand correctly, even before you came to
21 this country, you had a degree in pharmacy; is that correct,
22 sir?

23 A. That is correct.

24 Q. What school did you go to to attain that degree?

25 A. It's in state Gujarat, it's Allana College of Pharmacy.

1 Q. And what year did you obtain that degree?

2 A. 1978.

3 Q. Gujarat, fair to say that's in the country called India?

4 A. Yes.

5 Q. And what is your birth nationality?

6 A. Indian.

7 Q. How many languages do you speak, Doctor?

8 A. Three.

9 Q. What languages are those?

10 A. Gujarati, Hindi, and English.

11 Q. Now I want to ask you some questions, Dr. Vaidya, about
12 this man here, Reddy Annappareddy.

13 When did you first meet him?

14 A. I met him when I started worked at University of Maryland,
15 which is 2003.

16 Q. 2003.

17 You being a scientist, how many years would you say you
18 have known Reddy Annappareddy from 2003 to this year?

19 A. Like, 20 years.

20 Q. When you met Mr. Reddy Annappareddy, where did you meet
21 him?

22 A. So I was manager of Shock Trauma pharmacy, and he was a
23 night pharmacist. And he became a day pharmacist, and at that
24 time, we worked together very closely. I appointed him as a
25 supervisor of operating room pharmacy.

- 1 Q. Dr. Vaidya, let me walk through your answer a little bit.
2 You said you were working at Shock Trauma pharmacy when
3 you met Mr. Annappareddy?
- 4 A. Yes.
- 5 Q. Is that Shock Trauma pharmacy just down the way here at
6 University of Maryland?
- 7 A. Yes.
- 8 Q. All right. And about what year was that?
- 9 A. 2003.
- 10 Q. Then you testified, Dr. Vaidya, that you made
11 Mr. Annappareddy a supervisor; do you recall that?
- 12 A. Yes.
- 13 Q. And about what year did you make him a supervisor?
- 14 A. That was about -- later on in 2003 when we opened up a
15 brand new operating room pharmacy. We were in need of a
16 qualified person, so after a bunch of internal candidates, we
17 selected Reddy.
- 18 Q. Fair to say, then, that was a competitive process that
19 Mr. Annappareddy went through --
- 20 A. Yes.
- 21 Q. -- to become the supervisor?
- 22 A. Yes.
- 23 Q. And what exactly was his title, sir?
- 24 A. OR pharmacy supervisor.
- 25 Q. When you say "OR room," do you mean the operation room

1 pharmacy supervisor?

2 A. Operating room, yeah. Surgery, basically.

3 Q. And, Dr. Vaidya, I'm going to try my very best not to talk
4 when you're talking, and then when I talk and ask a question of
5 you, if you could try your very best not to talk. And that's
6 only so that our very talented court reporter can write down
7 everything that we say.

8 Is that okay, sir?

9 A. Yes, I understand.

10 Q. You mentioned that Mr. Annappareddy also was a day and a
11 night pharmacist; do you recall that testimony, sir?

12 A. Yes.

13 Q. Explain to Judge Anderson the difference between those two
14 positions.

15 A. So day pharmacists basically work eight-hour shift Monday
16 through Friday or five-days during a week. Whereas night
17 pharmacists work in our hospital seven on, seven off. So they
18 do 10-hour shifts at seven days straight, and they're off
19 seven days, and they recoupe and come back for the next
20 seven days.

21 Q. As between a night pharmacist and a day pharmacist,
22 Dr. Vaidya, what's the more difficult position?

23 A. Night pharmacist.

24 Q. Explain to Judge Anderson why.

25 A. It's -- it's not an easy shift. You don't have too many

1 resources. You're basically on your own. You have to make a
2 lot of decisions because all of the management is off, and you
3 have to make sure the operation still runs smoothly.

4 Q. Dr. Vaidya, you mentioned that at some point you actually
5 promoted Mr. Annappareddy to being a supervisor. Is that when
6 he was a weekend supervisor?

7 A. No. That was before that.

8 Q. Ah. So explain to me the first promotion, what was the
9 title there?

10 A. So first promotion was OR pharmacy supervisor.

11 Q. And from OR pharmacy supervisor, what was
12 Mr. Annappareddy's next promotion?

13 A. He was promoted to -- we were in need of a weekend
14 supervisor. Because most management was off and there was a
15 lot of things going on during weekend, we needed a strong
16 personality, so we decided to open up an OR weekend pharmacy
17 supervisor. And, again, he was selected from internal
18 candidates.

19 Q. And when he was selected from internal candidates to
20 become the weekend supervisor, can you explain to
21 Judge Anderson what were his duties.

22 A. So as a weekend supervisor, he was responsible -- he was
23 basically a weekend manager on staff, since all of the managers
24 were off. He was weekend manager, and he was responsible for
25 day-to-day operation of all different satellites that were

1 operational during the weekend. And he would visit all of the
2 satellites and he would make sure everybody is there, on staff,
3 and they're doing the job, and they're maintaining the proper
4 break rules and going to lunch on time, reporting to work on
5 time and leaving on time.

6 Q. When Mr. Annappareddy was promoted to this weekend
7 supervisor, about what year was that, Doctor?

8 A. I'm not exactly sure, but I would say 2004.

9 Q. And before he became the weekend supervisor, you already
10 testified that he was the OR supervisor. Fair to say that he
11 became the OR supervisor sometime between 2003 and 2004?

12 A. Yes.

13 Q. I want to direct your attention back to when
14 Mr. Annappareddy was the weekend supervisor. You explained
15 some of his obligations and duties, and you mentioned that he
16 was in charge of the, quote, "satellites." Can you explain to
17 Judge Anderson what exactly those satellites are.

18 A. So our pharmacy is divided into various operational areas.
19 Like, Shock Trauma pharmacy is in Shock Trauma area. We have a
20 Gudelsky building, which holds a lot of ICUs. We have a
21 Gudelsky pharmacy. We have a main pharmacy that covers the
22 rest of the hospital. We have a pediatric pharmacy that cares
23 for pediatric patients. So those were the different satellites
24 he was responsible for. And outpatient pharmacy, too.

25 Q. And the outpatient's pharmacy.

1 What about the transplant pharmacy?

2 A. Transplant pharmacy was part of Gudelsky, and yes, he was
3 responsible for that as well.

4 Q. And what about the investigational drug services pharmacy?

5 A. Investigational drug usually is closed on weekends, but if
6 there is study that is going on that requires investigational
7 drug to be supplied over the weekend, then that would be
8 weekend supervisor's responsibility.

9 Q. Dr. Vaidya, you were there with Mr. Annappareddy through
10 at least two promotions, right, from the OR pharmacy to the
11 weekend supervisor?

12 Dr. Vaidya, can you explain to Judge Anderson
13 Mr. Annappareddy's leadership style?

14 A. Mr. Annappareddy was selected as OR supervisor and then
15 weekend supervisor because of his dedication and his utmost
16 following of policies and procedures. We had a need of strong
17 leader over the weekend since management wasn't there, and
18 Mr. Annappareddy would provide that strong leadership. Because
19 people would come in and either park their cars, punch card in,
20 and then show up 15, 20 minutes later. Or punch card in and go
21 to lunch and then show up to work maybe half an hour later. We
22 wanted someone strong. And based on experience with operating
23 room work diligence, he was a perfect fit for -- to become OR
24 weekend supervisor.

25 Q. When you say, Dr. Vaidya, that you wanted "someone strong"

1 in that supervisory role, what exactly do you mean by that,
2 Doctor?

3 A. So "strong" means someone to hold our policies,
4 procedures, and pharmacy values, make sure people come to work,
5 they come on time. If they are not coming in time, he was the
6 person to receive a call to let him know if they were running
7 late or as to why, if they're not coming, why he was not
8 coming. He was also, at his disposal, the whole department of
9 pharmacy medications that if you were to lend a medication to
10 another hospital or another pharmacy, he would be responsible
11 for lending and borrowing policy. He was responsible for any
12 operational issues that goes on, any security issues, or any
13 doctor wanted something detailed, that he would be the point
14 person for contact.

15 Q. Dr. Vaidya, how would you rate -- well, before I ask you
16 that, let me ask you this: How would you describe
17 Mr. Annappareddy's work ethic?

18 A. He's a very honest and no-nonsense kind of person, but yet
19 caring and very kind-hearted person. But when it comes to
20 work, he did not hold anything back. If somebody came to work
21 late or somebody had to be written up or somebody had to be,
22 for any reason, done any write-up or anything else, he would
23 not hesitate.

24 Q. My question is a little bit different. I want to know
25 about Mr. Annappareddy's work ethic, himself. And think,

1 perhaps, about what he did as a night pharmacist while also
2 trying to create Pharmacare. How, again, would you describe
3 this man's ability to work?

4 A. He's hard working, very hard working. I have not seen --
5 in our department, there used to be saying, that nobody could
6 top the amount of hours or the amount of work he put in. Even
7 though when he was working weekends afterwards, he continued to
8 work at night because he was raising funds to start his own
9 business. He just worked hard at it. Very strong work ethics
10 and very hard-working person.

11 Q. And before we get to Mr. Annappareddy starting his own
12 business, can you explain to Judge Anderson what the term Med,
13 M-E-D, dash 4, means?

14 A. Med-4 was one of the unit in our hospital that dealt with
15 infectious disease. And HIV was very prevalent, so a lot of
16 HIV patients were being treated over there.

17 **THE COURT:** Is Med-4 an industry term?

18 **THE WITNESS:** It's medical industry, yeah. It's just
19 all different units are -- medicine units are called Med-1,
20 Med-2, Med-3, and so forth.

21 **BY MR. FLOWERS:**

22 Q. Is it also fair to say that that term, "Med-4," allows
23 people like yourself to work with HIV patients and not have to
24 always use the term "HIV," to kind of protect their medical
25 privacy?

1 A. At that time, that was the -- probably the reason Med-4.
2 I don't know the exact -- why it came. But yeah, we always
3 refer to HIV as Med-4 unit.

4 Q. Dr. Vaidya, now I want you to explain to Judge Anderson
5 why Mr. Annappareddy left working with you at the University of
6 Maryland to start his own business.

7 A. He always wanted to do something big and work for himself
8 rather than working for a hospital. Because he always
9 business-minded person, and he had hard-working ethics. So
10 even while he was working at the hospital, his goal was to
11 start his own business.

12 Q. What experience, if any, Dr. Vaidya, have you had with
13 Mr. Annappareddy and his business, Pharmacare?

14 A. I have been to a couple of his pharmacy for inauguration.
15 He just invited me to -- he invited me to a lot more, but I
16 went to only two. I could go to only two. He wanted me --
17 considers me as his big brother, and he wanted me to come and
18 give the blessings.

19 So I went there. I'm not essentially person to bless, but
20 I definitely wish him well.

21 Q. When you went to these inaugurations, is it fair to say
22 that those were big events when he was opening up a new store
23 with Pharmacare?

24 A. Yes.

25 Q. And who, if anyone, in your family went to Pharmacare for

1 their own medications?

2 A. My -- we were getting medication for my in-laws from his
3 pharmacy.

4 Q. Fair to say that you trusted your in-laws to go to
5 Pharmacare for their medication?

6 A. Yes.

7 Q. Why is that?

8 A. Because I know his work ethics. I know his discipline. I
9 know his honesty and caring. So at that time, he was the best
10 choice to trust my family's pharmacy business to him.

11 Q. Finally, Dr. Vaidya, in your opinion, what do you have to
12 say about Reddy Annappareddy's character for truthfulness?

13 **THE COURT:** Let me jump in here.

14 There's no objection, but Rule 608 tells us that evidence
15 of truthful character of a witness is admissible only after the
16 witness's character for truthfulness has been attacked. So has
17 it been attacked yet in this case? I have not yet ruled on
18 that disputed 302 where the finance gentleman -- I can't
19 remember his name -- gave an opinion.

20 **MR. FLOWERS:** Yes, Your Honor. From our perspective,
21 from opening statement till today, Mr. Annappareddy's character
22 for truthfulness has been attacked.

23 **THE COURT:** By way of a witness, by another witness?
24 By proof, in other words, not by opening statements.

25 **MR. FLOWERS:** Oh, certainly. You have the 302, that

1 the Court has already explained he hasn't ruled on.

2 **THE COURT:** I've still got that under advisement. 59
3 and 71 are still under advisement. We've got to debate that
4 during our gap time sometime.

5 **MR. FLOWERS:** Right. But also just the nature of the
6 case --

7 **THE COURT:** All right. Well, there's no objection on
8 the floor.

9 **MS. FARBER:** No.

10 **THE COURT:** So hearing no objection, move ahead.

11 **MR. FLOWERS:** Very well, Your Honor.

12 **BY MR. FLOWERS:**

13 **Q.** The question again, Mr. Vaidya, is given what you know,
14 the 20 years you know of Reddy Vijay Annappareddy, what is your
15 opinion for his character for truthfulness?

16 **A.** I don't think I understand what is being asked.

17 **Q.** What would you say about Reddy with respect to whether
18 he's honest?

19 **A.** I have held high regards for Reddy, and I trusted him with
20 my own family pharmacy. I have known him to be very honest and
21 very kind and caring.

22 **Q.** When, in your 20 years of knowing Reddy and trusting him
23 with your family and working him, has he ever engaged in
24 dishonesty?

25 **A.** Not that I'm aware.

1 Q. Just a few final questions, Dr. Vaidya.

2 Who was your supervisor at the time when you were at the
3 University of Maryland as a pharmacist?

4 A. So assistant director, his name is Dr. Shirish Patil, he
5 was my immediate supervisor. And our director, so I had
6 dotted-line responsibilities towards director also, his name is
7 Mr. Mark Summerfield.

8 Q. And I want to just focus your direction or your answers to
9 Mr. -- or Dr. Shirish Patil. What can you tell Judge Anderson,
10 if anything, about whether Dr. Patil worked with
11 Mr. Annappareddy at Pharmacare?

12 MS. FARBER: Objection, Your Honor. It seems like
13 we're about to go into some hearsay testimony or testimony
14 based on hearsay, and the relevance of this is unclear.

15 MR. FLOWERS: May I respond, Your Honor?

16 THE COURT: Yes, sir.

17 MR. FLOWERS: We're not going into hearsay. I'm
18 simply asking him what his experience is with this particular
19 person at Pharmacare, number one.

20 Number two, the Government has put this issue squarely
21 before the Court because the Government has argued that
22 Mr. Annappareddy simply had people who were officers in name
23 only and were of no substance.

24 I believe the testimony from Dr. Vaidya is going to show
25 that --

1 **MS. FARBER:** Your Honor, before we go into what the
2 testimony is going to be, can we ask the witness --

3 **THE COURT:** Let me say, I don't think we've gone into
4 hearsay yet, at least at this point. And if he's just going to
5 talk about experiences, I'll overrule the objection for now.

6 So go ahead.

7 **MR. FLOWERS:** Very well, Your Honor. Thank you.

8 **BY MR. FLOWERS:**

9 **Q.** Dr. Vaidya, just to refocus your attention on Dr. Shirish
10 Patil, can you just explain to Judge Anderson what you know
11 about Dr. Shirish Patil working for Pharmacare and working on
12 behalf of this man, Mr. Annappareddy?

13 **A.** So I know Dr. Shirish Patil. Dr. Patil was my immediate
14 supervisor. He was a assistant director. A very knowledgable,
15 very honest person. Again, one of those person, kind-hearted,
16 but always stick to the policies. And he would not take any
17 shortcuts or any underhanded --

18 **MS. FARBER:** Objection, relevance as to character
19 evidence regarding Patil.

20 **THE COURT:** I haven't -- well, so far, I haven't heard
21 anything objectionable so far.

22 Go ahead.

23 **BY MR. FLOWERS:**

24 **Q.** Thank you, Doctor. Unfortunately, I apologize, that in
25 the courtroom sometimes you've got to deal with objections.

1 But continue your answer, sir.

2 A. So I explained what my experience and understanding with
3 Dr. Patil was when I worked with him. I do not know much more
4 about when he worked with Mr. Reddy at Pharmacare, but I knew
5 that he worked there. That's all.

6 **MR. FLOWERS:**

7 Very well, Dr. Vaidya. I appreciate your testimony.
8 The Plaintiff, Judge Anderson, has no further questions.

9 **THE COURT:** All right.

10 Cross-examination.

11 **MS. FARBER:** May it please the Court.

12 - - -

13 **CROSS-EXAMINATION**

14 - - -

15 **BY MS. FARBER:**

16 Q. Good afternoon, Doctor. Would you pronounce your name for
17 me, I didn't hear it the first time.

18 A. Vaidya.

19 Q. Thank you, Dr. Vaidya.

20 Did you -- when were you asked to come in and give
21 testimony today, when were you first asked?

22 A. This past Saturday.

23 Q. And who asked you?

24 A. Mr. Annappareddy asked me.

25 Q. What did he tell you about the testimony that you would be

1 giving?

2 **MR. FLOWERS:** Your Honor, I'm going to object to the
3 extent that we're starting to get into work product and witness
4 prep issues. Certainly, they can ask, you know, when he was
5 contacted, but the actual substance of that contact, that's
6 really work product. As the Court is very well aware, not only
7 does the attorney have work product, but so does the client.

8 **THE COURT:** You made your point. He was contacted
9 only very recently. Now, how much further do you want to go?

10 **MS. FARBER:** I can move on, Your Honor.

11 **THE COURT:** All right.

12 **BY MS. FARBER:**

13 **Q.** Sir, Dr. Vaidya, did you attend any part of
14 Mr. Annappareddy's criminal trial?

15 **A.** No.

16 **Q.** Did you ever talk to any investigator for the Government
17 at any point about Mr. Annappareddy?

18 **A.** No.

19 **Q.** You gave testimony earlier about Med-4s; do you recall?

20 **A.** Yes.

21 **Q.** And you said that Med-4s mean HIV patients?

22 **A.** Yes.

23 **Q.** When you talk about the term "Med-4," does that also
24 include cancer patients?

25 **A.** At that time, I don't remember whether -- but HIV patients

1 were there.

2 Q. And when you say "at that time," what are you talking
3 about?

4 A. When I was working at the hospital. Because I moved on
5 afterwards.

6 Q. And what years was that again?

7 A. 2005.

8 Q. Okay. And is the term "Med-4" still in use in the
9 pharmaceutical industry today?

10 A. It is used in our hospital as Med-4, Division Med-4. But
11 it is not HIV anymore.

12 Q. Okay. Does the term "Med-4," as it's used in your
13 hospital, does it include cancer patients?

14 A. Now we have special cancer units, so Med-4 is not part of
15 the cancer center.

16 Q. And does the term "Med-4" include hepatitis patients?

17 A. Yes.

18 Q. Does the term "Med-4" include patients who are on
19 antipsychotic medications?

20 A. We have a special psych unit for that.

21 Q. So Med-4 is different from antipsychotic patients or
22 psychotic patients?

23 A. Yeah.

24 Q. Is that a "yes"?

25 A. Yes.

1 Q. Thank you.

2 And you testified that Mr. Annappareddy was utmost at
3 following of policies and procedures; is that a fair summary of
4 what you said?

5 A. Yes.

6 Q. And you have supervised people in a pharmacy setting
7 before, correct?

8 A. Yes.

9 Q. As a supervisor in a pharmacy, have you ever screamed at
10 your staff in the workplace?

11 A. Yes, we screen them for evaluation, we screen them for
12 hiring, and we screen them for promotion.

13 Q. I'm sorry. What I said was scream, S-C-R-E-A-M.

14 A. Oh, I'm sorry.

15 Q. Have you ever screamed or yelled at your staff in the
16 workplace?

17 A. I may have. I don't remember particularly.

18 Q. Okay. So you might have done that?

19 A. Yeah.

20 Q. Thinking about your pharmacy, do you have overflowing bins
21 of undelivered medications on your floor?

22 A. We do have medication that we deliver on certain time,
23 like fixed time deliveries, every hour on the hour. So during
24 that time, yes, medication bins can overflow, waiting for
25 delivery.

1 Q. And then once those medications are delivered, do you
2 continue to have overflowing bins in your pharmacy?

3 A. For the next delivery, it can fill up easily. Because
4 it's a big hospital.

5 Q. Have you ever taken undelivered medications home with you,
6 sir?

7 A. No.

8 Q. Would it be improper to do that?

9 A. Yes.

10 Q. Did Reddy tell you that he took undelivered medications to
11 his house?

12 A. No.

13 Q. Doctor, have you ever stored undelivered medications on a
14 toilet in your house?

15 A. No.

16 Q. Would it be improper to do that?

17 A. Yes.

18 Q. Would that be a violation of policies and procedures?

19 A. Yes.

20 Q. Did Mr. Annappareddy ever tell that you he took
21 undelivered medications home and put them on a toilet in his
22 house?

23 A. No.

24 MS. FARBER: No further questions.

25 THE COURT: Anything further?

1 **MR. FLOWERS:** Nothing from the Plaintiff, Your Honor.

2 **THE COURT:** Thank you, sir. You may step down.

3 You're excused.

4 **THE WITNESS:** Thank you.

5 (Witness exits.)

6 **THE COURT:** Next witness.

7 **MR. FLOWERS:** All right. We don't have any other
8 witnesses now, Your Honor. We anticipate one more witness,
9 Ernest McCray, tomorrow morning when the Court starts at 9:30.
10 There's another witness -- there's another witness that we
11 expect to have early next week that I think will work well with
12 the Court's trial schedule with respect to Sandra Wilkinson and
13 Cathy Pascale. We're still trying to work some things out with
14 that witness. But I think that's --

15 **THE COURT:** Just tell me how many more witnesses you
16 have and who they are, if you can.

17 **MR. FLOWERS:** Well, I can tell you that we certainly
18 have Ernest McCray.

19 **THE COURT:** And he'll be here Monday?

20 **MR. FLOWERS:** He'll be here tomorrow at 9:30. Yes,
21 Your Honor.

22 And also, Your Honor, we've got Bill Fassett who, I
23 believe, is going to be sometime next week. We're bringing him
24 in from Washington, if I'm correct on that. But those are two
25 witnesses we have for sure.

1 We have a third --

2 **THE COURT:** Fassett is the pharmacy expert, right?

3 **MR. FLOWERS:** Exactly, Your Honor. Yes, that Your
4 Honor has read about.

5 And then we have a third witness that we're still trying
6 to see if there's some work product issues we're working
7 through, quite frankly, Your Honor. But as soon as we're able
8 to nail those things down, perhaps as early as tomorrow, we
9 will certainly let the Court and opposing counsel know. That
10 third witness, though, would not be able to testify until next
11 week in accordance, I think, with the schedule that's already
12 been, at least tentatively, set for next week.

13 **MR. PHELPS:** Who is the third witness?

14 **MR. FLOWERS:** Again, that witness is someone that
15 we're working out right now. It's a rebuttal witness. It is a
16 witness that I don't want to reveal at this point. I will as
17 soon as I can, because of work product issues.

18 **MR. PHELPS:** Your Honor, we object. Your Honor has
19 been very permissive of allowing them to call witnesses that
20 have never been identified, weren't on the witness list, and
21 they get dubbed "rebuttal" as an excuse for never disclosing
22 them, and then Your Honor hears when they get up on the stand
23 that they're not actually rebuttal witnesses, they're
24 substantive witnesses.

25 **THE COURT:** Well, I counted the time against the

1 Plaintiff earlier.

2 **MR. PHELPS:** Your Honor, we have no idea who they're
3 talking about. We're a week into trial. Who is this person?

4 **MR. FLOWERS:** Your Honor, if I can, just for the
5 purposes of the record, I appreciate if opposing counsel would
6 not holler in court.

7 Again, Your Honor, as we've explained from day one in this
8 trial, given how opposing counsel has tried this case, we are
9 the ones who have been hamstrung in trying to rebut and put on,
10 effectively, an entire criminal trial. Because they said from
11 day one that this man can't prove that he's innocent.

12 **THE COURT:** I haven't heard them say that. Is that in
13 the transcript anywhere?

14 **MR. FLOWERS:** That's in the transcript. That's in
15 their opening statement. They said, "The one word you did not
16 hear Mr. Flowers say was that Mr. Annappareddy was innocent."

17 **THE COURT:** But they didn't say he has to prove he's
18 innocent to this fact-finder here.

19 **MR. FLOWERS:** Well, Your Honor, it's interesting, I
20 mean, they -- from our perspective, they certainly said it.
21 Why else would they open on it --

22 **THE COURT:** Well, if they said it, it didn't fool me.
23 Leave it at that.

24 **MR. PHELPS:** Your Honor, it's also in the first line
25 in there. The word "innocent" is also in the first line of the

1 complaint --

2 (Cross talk.)

3 **MR. FLOWERS:** If I could just finish first,
4 Mr. Phelps, before you start hollering and cutting me off.

5 The other issue, Your Honor, is they've put on an entire
6 case about Mr. Annappareddy having, as I said, directors in
7 name only. They've put on an entire case talking about how
8 Mr. Annappareddy -- we heard today from one of their witnesses
9 that, from our purposes, should never have been on the witness
10 stand. For the first time we heard that at Pharmacare,
11 Mr. Annappareddy was engaged in forging signatures. So we have
12 to rebut --

13 **THE COURT:** You say that's the first time you were
14 aware that that accusation was made? I mean, that was at the
15 criminal trial, wasn't it?

16 **MS. FARBER:** Your Honor --

17 **MR. FLOWERS:** Certainly. But the point, Your Honor,
18 again, is that they could have tried this case simply by
19 tabling it, as we did, to two elements in this case: Whether
20 there's probable cause for Plaintiff's Exhibit 70, the Maura
21 Lating affidavit, and whether their two agents acted
22 maliciously.

23 Instead, they have opened this case up into a whole
24 Pandora's box and is effectively trying to retry the criminal
25 trial that they lost in this civil forum. So it is for that,

1 Your Honor, that we certainly ask the Court to allow us to
2 rebut -- we feel these witnesses are rebuttal.

3 And at the very least, Your Honor, we've got to be able to
4 put on a case. We're still well within our 30 hours, given,
5 again, how difficult it's been for us to do that.

6 So those are the reasons, Your Honor, that we are where we
7 are. We intend to finish this case next week. We'd like to go
8 to closings next week, in person.

9 **MS. FARBER:** Your Honor, I just would like to correct
10 the record on one brief point, which is that Plaintiff opened
11 the door to the forged signature and delivery logs in Vipin
12 Patel's testimony. It is yesterday's transcript at Page 36.
13 That was Plaintiff's questioning.

14 **THE COURT:** All right.

15 Anything further, Mr. Phelps?

16 **MR. PHELPS:** Your Honor, they're dropping witnesses on
17 us at the last minute for obvious strategic reasons. That's
18 all this is.

19 **THE COURT:** All right. So just to outline what we
20 have, we've got McCray, who's going to be here tomorrow.

21 We've got Fassett, who will be here next Monday, did you
22 say, Mr. Flowers?

23 **MR. FLOWERS:** It's the 13th, whatever day that is,
24 Your Honor.

25 **THE COURT:** That's Tuesday.

1 **MR. FLOWERS:** Tuesday.

2 **THE COURT:** And then the mystery witness, whose
3 identity has not been revealed --

4 **MR. FLOWERS:** Who will be revealed soon.

5 **THE COURT:** Let me finish --

6 **MR. FLOWERS:** Yes, Your Honor.

7 **THE COURT:** -- plus three more. Obviously
8 Mr. Annappareddy, and then the two prosecutors next week, to go
9 for the Plaintiff.

10 And how many more defense witnesses do we have?

11 **MR. PHELPS:** Your Honor, we will have Mr. Dykes
12 tomorrow after McCray finishes. And then our only two
13 remaining are Ms. Pascale and Ms. Wilkinson.

14 **THE COURT:** So we still appear to be on track to
15 finish next week.

16 **MR. PHELPS:** I see with a gap between basically this
17 Thursday through Monday of next week.

18 **THE COURT:** Right.

19 Well, Mr. Flowers, can you say as an officer of the court
20 that this third witness that you've not identified is a true
21 rebuttal witness to respond to new issues developed by the
22 defense in its case in chief?

23 **MR. FLOWERS:** Yes, Your Honor. And, again, as an
24 officer of the court, I want to ensure the Court, my
25 understanding of rebuttal, having been an officer of this court

1 both as a federal prosecutor, a federal public defender, and a
2 lawyer in private practice for over 20 years, is that when the
3 opposing party says "X," I can say "Not X." That's rebuttal.

4 Now, I understand the Court may see it differently, but
5 that's my understanding, and we are doing the research to
6 provide that to the Court. But that's who these witnesses are.

7 They have said "X," we have witnesses that say "Not X" on
8 material matters in this case.

9 **THE COURT:** Actually, the Plaintiff has the burden of
10 proof in this case. So the Plaintiff is saying "X," the
11 Government is saying "Not X." And the question is: Should you
12 be able to replay out old testimony I've already heard through
13 another witness that doesn't respond to any new matter brought
14 up by the defense; that's what it appears to me.

15 **MR. FLOWERS:** It's again, the opposite of what the
16 other side is saying. Whether it's X or not X.

17 **THE COURT:** Let me just take this under advisement
18 today. This mystery witness, we'll take under advisement.

19 But let's just work our way through the rest of the trial
20 to be sure we can finish next week. That's what I'm concerned
21 about right now.

22 How long do you anticipate Mr. McCray will be on the stand
23 tomorrow?

24 **MR. FLOWERS:** Not long, Your Honor. About as long as
25 Dr. Vaidya was on the stand today.

1 **THE COURT:** And the cross of him?

2 **MR. PHELPS:** Not very long, Your Honor.

3 **THE COURT:** All right. And then your witness tomorrow
4 will be how long?

5 **MR. PHELPS:** 30 to 35 minutes, Your Honor.

6 **THE COURT:** And what about the cross of that witness?

7 **MR. GREENBERG:** I would estimate for -- between half
8 hour and one hour, is my estimate. Probably more towards half
9 an hour.

10 **THE COURT:** And then we're out of witnesses until
11 Monday; is that right?

12 **MR. PHELPS:** Tuesday, I think -- if Dr. Fassett is
13 going to be on Tuesday, I believe you've asked for
14 Ms. Wilkinson on Tuesday as well.

15 **THE COURT:** I thought Fassett could be here Monday?

16 **MR. GREENBERG:** Your Honor, Professor Fassett is
17 traveling from Spokane, Washington, and cannot be here until
18 Tuesday, as I understand it, because he had to make
19 arrangements for his seriously ill wife. We could certainly
20 inquire about whether that can happen, but -- I can go back to
21 him. That's my understanding, and I'll be happy to go back to
22 him.

23 **MR. PHELPS:** Your Honor, for our part, we'd probably
24 prefer to put more witnesses in one day than have one witness
25 on Monday, one witness on Tuesday, one witness on Wednesday.

1 **THE COURT:** I just don't want to get to Friday and not
2 finish, when we have this huge gap after I cautioned everybody
3 not to cut the days short. I said that in writing and orally
4 several times. We don't want to rush the testimony of
5 Mr. Annappareddy, and y'all don't want to rush your closing
6 arguments either.

7 I mean, tell me about his wife's health problem. She only
8 has health problems certain days of the week? I mean, it's
9 just like the Patels, they have childcare issues every day of
10 the week, but they had to come today. Help me with that.

11 **MR. GREENBERG:** Your Honor, let me reach out to
12 Professor Fassett and see if he can come one day earlier. I
13 think that might be doable, and that might alleviate some --

14 **THE COURT:** We could start after lunch on Monday, and
15 then maybe not have too much of a gap. Hold on.

16 I'm just worried if we start Tuesday with Fassett, the
17 mystery witness, the Government's final witness, and then the
18 two prosecutors, and then Mr. Annappareddy, we may not finish
19 on Friday.

20 **MR. PHELPS:** Your Honor, I think you added a witness
21 for the Government there.

22 **MS. FARBER:** The Government's final witness is Jeremy
23 Dykes, and he'll be here tomorrow.

24 **THE COURT:** Tomorrow, okay.

25 So if we come back next Tuesday, we've got two more

1 relatively short witnesses for the Plaintiff, the two
2 prosecutors and then Mr. Annappareddy.

3 **MR. PHELPS:** That's how I see it, Your Honor.

4 **THE COURT:** That's five witnesses in four days. But
5 y'all said the prosecutors might be shorter than I thought they
6 were going to be; is that correct?

7 **MR. PHELPS:** I mean, Your Honor, you've heard quite a
8 bit at this point. I don't think they need to be as long as
9 they could have been.

10 **THE COURT:** All right. Well, do you want to adjourn
11 then until tomorrow morning?

12 **MR. PHELPS:** Yes, Your Honor.

13 **THE COURT:** We'll finish for the week tomorrow.

14 **MR. FLOWERS:** Yes, Your Honor.

15 **THE COURT:** We might want to hear argument on the
16 admissibility of 302s before y'all leave tomorrow. I've got
17 your briefs; I read your briefs. I'll look at them again
18 tonight.

19 But just for our -- for our plane ride reservation
20 purposes, how long do we need tomorrow for the witness?

21 **MR. FLOWERS:** For our witness we're only talking, I
22 really don't think it's going to go more than an hour. I would
23 not be surprised if it went a half hour for our witness.

24 **THE COURT:** All right. Well, I guess we'll see you at
25 9:30 tomorrow then.

1 All right. We'll be in recess.

2 THE CLERK: All rise. This Honorable Court is now in
3 recess.

4 (Adjourned at 4:30 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 6th day of June 2023.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

<p>BY MR. EISER: [4] 20/17 88/14 93/4 140/1</p> <p>BY MR. FLOWERS: [2] 139/19 175/7</p> <p>BY MR. GREENBERG: [7] 31/17 73/9 76/7 94/1 94/10 112/2 131/24</p> <p>BY MS. FARBER: [3] 51/10 55/25 165/6</p> <p>MR. EISER: [27] 4/19 6/12 8/7 21/7 21/11 33/17 40/12 41/13 78/6 79/15 82/25 88/7 88/12 91/25 93/9 93/11 107/20 131/22 135/3 135/9 136/14 137/15 137/17 137/19 138/5 139/25 141/10</p> <p>MR. FLOWERS: [62] 142/2 142/9 143/22 144/24 145/6 145/9 146/16 147/1 148/12 150/13 150/15 150/18 151/22 152/7 152/15 160/2 160/6 161/5 161/20 161/24 162/20 163/4 163/13 163/17 165/13 171/14 174/22 175/1 175/4 176/8 176/22 177/15 177/17 190/20 190/25 191/5 191/11 192/15 192/17 193/7 194/6 195/2 199/1 199/7 199/17 199/20 200/3 200/14 201/4 201/14 201/19 202/3 202/17 203/23 204/1 204/4 204/6 204/23 205/15 205/24 208/14 208/21</p> <p>MR. GREENBERG: [99] 3/14 4/10 4/16 5/10 5/17 6/5 8/10 10/12 10/21 10/24 11/14 11/25 12/10 18/17 19/2 20/4 20/15 21/14 23/22 30/24 31/14 32/1 35/21 39/13 40/9 41/16 41/23 42/5 42/10 42/17 43/1 43/3 48/1 48/3 51/18 58/17 73/2 76/1 77/18 78/7 78/15 86/14 86/19 86/22 87/25 88/3 88/8 91/19 92/22 93/3 93/25 94/8 94/25 96/3 96/17 97/7 97/14 97/20 98/2 98/7 98/20 99/1 99/13</p>	<p>100/15 101/14 101/18 102/8 102/17 103/8 103/19 104/6 104/14 105/5 106/20 111/22 112/24 113/7 135/5 135/11 135/16 135/20 136/1 136/8 136/19 137/5 137/9 137/23 138/1 138/14 139/10 139/21 140/4 140/18 140/23 141/12 141/25 206/7 206/16 207/11</p> <p>MR. MILLER: [1] 141/23</p> <p>MR. PHELPS: [28] 11/15 11/23 95/6 95/15 96/22 97/5 97/23 98/12 98/18 98/24 135/24 176/16 176/20 200/13 200/18 201/2 201/24 203/16 204/11 204/16 206/2 206/5 206/12 206/23 207/20 208/3 208/7 208/12</p> <p>MS. 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SHIFF: [4] 100/2 101/6 101/17 103/9</p> <p>THE CLERK: [20] 5/15 43/6 43/8 43/13 69/21 69/25 79/25 80/3 104/22 105/1 141/20 152/18 152/21 153/1 177/6 177/10 177/19 177/22 178/2 209/2</p> <p>THE COURT: [209] 3/2 3/15 4/13 4/17 5/13 6/9 6/13 8/9 8/12 10/15 10/23 11/1 11/18 11/24 12/5 12/13 18/19 18/22 19/5 19/20 20/16 21/9 21/12 30/22 31/1 33/18 35/12 35/14 40/11 41/14 41/19 41/22 42/2 42/8 42/15 42/22 43/2 43/4 48/4 51/21 58/19 69/19 70/2 73/1 73/3 77/22 77/25 78/3 78/5 78/10 79/12 79/22</p>	<p>86/17 86/20 86/23 88/2 88/5 88/10 88/13 91/22 92/1 93/1 93/10 93/12 95/3 95/8 95/12 96/2 96/15 96/20 97/2 97/6 97/12 97/18 97/21 98/5 98/10 98/16 98/19 99/2 99/25 101/3 101/9 101/12 101/23 102/15 103/3 103/16 103/24 104/11 104/20 105/3 105/7 105/9 107/21 107/25 135/7 135/12 135/19 136/6 136/11 137/4 137/7 137/14 137/16 137/18 137/20 137/25 138/2 138/16 139/13 139/23 140/7 140/11 140/21 141/3 141/9 141/11 141/14 141/16 142/5 142/8 142/21 143/11 144/20 145/2 145/7 146/11 146/13 146/24 147/3 147/7 149/14 150/11 150/14 150/16 151/5 151/12 151/23 152/13 152/16 155/21 155/25 160/7 161/7 161/12 161/22 162/3 162/9 162/17 163/1 163/9 163/14 165/24 171/12 174/25 176/9 176/12 176/15 176/18 177/1 177/12 177/16 188/17 190/13 190/23 191/2 191/7 191/10 192/16 193/3 193/20 194/9 195/8 195/11 198/25 199/2 199/6 199/15 199/19 200/2 200/25 201/12 201/17 201/22 202/13 203/14 203/19 203/25 204/2 204/5 204/7 204/14 204/18 205/9 205/17 206/1 206/3 206/6 206/10 206/15 207/1 207/14 207/24 208/4 208/10 208/13 208/15 208/24</p> <p>THE WITNESS: [29] 4/14 4/22 18/21 19/7 33/20 35/13 35/20 41/20 43/11 48/2 50/21 55/17 58/20 73/5 76/4 77/21 78/2 95/10 101/11 107/23 131/23 138/17 139/15 140/10 140/12 152/24 177/25 188/18 199/4</p>	<p>\$ \$1,370,463.75 [1] 61/22 \$1.37 [1] 62/12 \$1.37 million [1] 62/12 \$2,672,068 [1] 77/4 \$2.6 [1] 69/11 \$2.6-million [1] 69/11 \$200,203.88 [1] 85/4 \$3 [1] 53/11 \$5,000 [1] 9/3</p> <p>' '86 [1] 70/14 '93 [1] 70/22</p> <p>... 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